

**CITY OF NEWPORT BEACH
PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE**

**THURSDAY, SEPTEMBER 5, 2013
REGULAR MEETING – 6:30 p.m.**

**BRADLEY HILLGREN
Chair**

**LARRY TUCKER
Vice Chair**

**KORY KRAMER
Secretary**

FRED AMERI

TIM BROWN

RAYMOND LAWLER

JAY MYERS

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

KIMBERLY BRANDT, Community Development Director

**BRENDA WISNESKI, Deputy Community
Development Director**

LEONIE MULVIHILL, Assistant City Attorney

TONY BRINE, City Traffic Engineer

MARLENE BURNS, Administrative Assistant

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's web site at: <http://www.newportbeachca.gov> and for public inspection in the Community Development Department, Planning Division located at 100 Civic Center Drive, during normal business hours. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or lbrown@newportbeachca.gov).

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

**NEWPORT BEACH PLANNING COMMISSION AGENDA
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, SEPTEMBER 5, 2013
REGULAR MEETING – 6:30 p.m.**

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. PUBLIC COMMENTS

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

V. REQUEST FOR CONTINUANCES

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF AUGUST 22, 2013

Recommended Action: Approve and file

VII. PUBLIC HEARING ITEMS

Speakers must limit comments to three (3) minutes on all items. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

ITEM NO. 2 UPTOWN NEWPORT MSDR (PA2013-129)

Site Location: 4311-4321 Jamboree Road

Summary:

A Master Site Development Review application for the Uptown Newport mixed-use residential project which consists of 1,244 residential units, 11,500 square feet of neighborhood-serving retail space, and approximately two (2) acres of park space. The purpose of the Master Site Development Review is to ensure that the project will be developed in a cohesive manner in phases consistent with the approved Uptown Newport Planned Community Development Plan (PCDP), Development Agreement, environmental mitigation measures, and applicable City codes and standards.

CEQA Compliance:

All environmental effects of the Uptown Newport Planned Community have been previously addressed by the certification of Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) and approving Master Site Development Review No. SD2013-002.

Recommended Action:

1. Conduct public hearing; and
2. Provide direction to the applicant and/or staff regarding the adequacy of the architectural focal point provision at either end of the main entry drive at the Fairchild intersection; and
3. Adopt Resolution No. ____, finding that all environmental effects of the Uptown Newport Planned Community have been previously addressed by the certification of Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) and approving Master Site Development Review No. SD2013-002.

ITEM NO. 3 LIDO VILLAS (PA2012-146)**Site Location:** 3303 and 3355 Via Lido**Summary:**

The project consists of the demolition of a 3-story commercial building, a single-story church building (First Church of Christ, Scientist), and a 56-space surface parking lot to accommodate the development of 23 townhouse-style multi-family dwelling units on a 1.2 acre site. The following applications are requested in order to implement the project as proposed:

1. **General Plan Amendment**-to change the land use of a portion of the project site (3303 Via Lido) from PI (Private Institutions, 0.75) to RM (Multi-Unit Residential, 20 DU/acre).
2. **Coastal Land Use Plan Amendment**-to change the land use of a portion of the project site (3303 Via Lido) from PI-B (Private Institutions) to RM-D (Multiple-Unit Residential).
3. **Zoning Code Amendment**-to change the Zoning designations of the properties at 3303 Via Lido from PI (Private Institutions) and 3355 Via Lido from RM (Multiple-Unit Residential, 2178) and establish a Planned Community Development Plan (PCDP) Zoning District over the entire project site with development standards for a new 23-unit multi-family project. In order to establish the proposed planned community development plan, a waiver of the minimum site area of 10 acres of developed land is necessary.
4. **Site Development Review**-to allow the construction of 23 townhouse-style multi-family dwelling units.
5. **Tract Map**-to combine six underlying parcels on two existing properties and establish a 23-unit residential condominium tract on a 1.2 acre site.
6. **Mitigated Negative Declaration**-to evaluate environmental impacts relative to the California Environmental Quality Act (CEQA).

CEQA Compliance:

On the basis of the analysis provided in the Mitigated Negative Declaration (MND), City staff has concluded that the project would not have a significant impact on the environment. The MND was completed and circulated for a mandatory 30-day public-review period that began on July 12, 2013, and concluded on August 13, 2013. The public comment period was extended through August 13, 2013 to allow for comments received through OPR (the Office of Planning and Research), which began the review period on July 15, 2013.

Recommended Action:

1. Conduct public hearing; and
2. Adopt Resolution No. ____ and attached Exhibits recommending the City Council:
 - Adopt Mitigated Negative Declaration No. ND2013-001;
 - Approve General Plan Amendment No. GP2012-005;
 - Approve Local Coastal Plan Amendment No. LC2013-001;
 - Approve Code Amendment No. CA2012-008;
 - Approve Site Development Review No. SR2013-001; and
 - Approve Tract Map No. NT2013-001
(Tentative Tract Map No.17555).

ITEM NO. 4 NEWPORT HARBOR YACHT CLUB (PA2012-091)**Site Location:** 720 West Bay Avenue, 800 West Bay Avenue, 711-721 West Bay Avenue, and 710-720 West Balboa Boulevard**Summary:**

The proposed project consists of the demolition of the 19,234-square-foot yacht club facility and construction of a 23,163 square foot facility. In order to implement the project, a General Plan Amendment, Coastal Land Use Plan Amendment, Zoning Code Amendment, Minor Use Permit, and Planned Development Permit, would need to be approved to address the yacht club use, square footage increase, additional height, parking, and land use designations for certain properties currently being used for boat storage and parking. Should the project be approved, the Planning Commission recommendation will be forwarded to the City Council for the final review and action.

Recommended Action:

1. Remove the item from the calendar. The project will be re-noticed for a future meeting.

ITEM NO. 5 WOODY'S WHARF USE PERMIT (PA2011-055)

Site Location: 2318 Newport Boulevard

Summary:

Reconsideration of an application to amend a use permit to change the operational characteristics of an existing restaurant. The requested amendment includes: 1) the introduction of patron dancing; 2) extending the opening hour from 11:00 a.m. to 10:00 a.m. and the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.; 3) amending the requirement for full-time valet parking service during restaurant operating hours; and 4) waiving up to 6 parking spaces resulting from increased occupancy created by patron dancing and the elimination of valet parking service. A variance is also requested to allow a proposed patio cover to encroach into the required bulkhead setback.

CEQA Compliance:

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

Recommended Action:

1. Conduct a public hearing; and
2. Adopt Resolution No. _____ approving Conditional Use Permit No. UP2011-010 and Variance No. VA2013-006, to:
 - 1) allow the proposed patio cover to encroach into the bulkhead setback;
 - 2) extend the opening hour of the restaurant and outdoor dining area to 10:00 a.m., daily, and extend the closing hour of the outdoor dining area to 2:00 a.m., daily;
 - 3) require the use of the valet parking on an as-needed basis only; and
 - 4) waiver of a portion of the required parking.

But denying the request to allow changes to the restaurant operation and use of the outdoor dining area, that include:

- 1) the introduction of patron dancing within the interior of the restaurant; and
- 2) removing tables and chairs within the outdoor dining area.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION

ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Committee Updates:

1. Land Use Element Amendment Advisory Committee
2. General Plan/Local Coastal Program Implementation Committee

ITEM NO. 8 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

ITEM NO. 9 REQUESTS FOR EXCUSED ABSENCES

IX. ADJOURNMENT

September 5, 2013 Planning Commission Agenda Comments

Comments by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229). ~~strikeout~~ underline format is used to suggest changes to the passages quoted in *italics*

Item No. 1 Minutes of August 22, 2013

1. Page 6, paragraph 3: “Vice Chair Tucker referenced a list of permitted and prohibited uses ~~with~~ in the PC text and suggested ...”
2. Page 7:
 - a. Paragraph 3: “Ms. Nova reported on the establishment of setbacks on all ~~streets~~ facing street-facing frontages and addressed ... “
 - b. Under Item 5:
 - i. Paragraph 1, line 2: “... it is the only element within the General Plan that requires review by the State ~~the~~ Department of Housing and Community Development (HCD) ...”
 - ii. Paragraph 5, line 3: “He addressed the lack of a CEQA finding within the resolution ...”
3. Page 8, paragraph 1, line 2: “...and recused himself from hearing the aforementioned ~~time~~ item and ...”
4. Page 9:
 - a. Paragraph 1, line 4: “He presented details of the phase-one park plan which consists of a promenade for activities, ...”
 - b. Paragraph 2, line 5: “Mr. Nilmeier addressed the use ~~of~~ enhanced materials, the architectural elements for façades, and ...”
5. Page 10:
 - a. Paragraph 4: “Vice Chair Tucker reiterated ~~that the~~ need to make the building look less “institutional.”
 - b. Paragraph 6, line 5: “... and Mr. Shopoff’s assertion that he would be working with ~~them~~ the Newport Mesa School Board regarding the matter, ...”
 - c. Paragraph 11, final line: “... with changes as recommended ~~by~~ per discussion above.”
6. Page 12, last line: “The agenda for the Regular Meeting was posted on August 16, 2013, at 3:00 p.m., in the binder and on the City Hall Electronic Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.”

Item No. 2 Uptown Newport MSDR (PA2013-129)

1. I submitted [written comments](#) on this item in connection with the original hearing on August 22. Some of them remain valid:
 - a. I continue to think that the Commission should be aware of the changes to the parcel map made at a Zoning Administrator hearing on [June 27](#), which will be ratified by this approval. Those changes, from 2 lots to 4, seem inconsistent with the previously-approved Phasing Plan.
 - b. The City's "Current Projects & Issues" page informing the public about the status of the [Uptown Newport Project](#) continues to fail to mention the most public meetings regarding the project, including the present one.

Item No. 3 Lido Villas (PA2012-146)

1. I submitted preliminary [written comments](#) on this item in connection with the original hearing on August 22.
2. I have still not had time to carefully read the [Mitigated Negative Declaration](#), but continue to think the draft Resolution of Approval presents a garbled version of the period during which it was officially circulated for public review, with the end date being variously stated as August 12, 13 or 14. My understanding is the public is still free to comment upon and question the propriety of the *Mitigated Negative Declaration* up to and including the City Council hearing at which it is proposed to be adopted (tentatively [scheduled](#) for November 12, 2013, although staff has no obligation to respond to comments received after the close of the original public review period, whenever that was).
3. Regarding the **draft Resolution of Approval** starting on handwritten page 13 of the printed staff report for the September 5 meeting:
 - a. Section 1.1:
 - i. Line 3: "... as shown on **the** map recorded in Book 28, ..."
 - ii. Second line from end: "... a General Plan amendment (**GPA**), Coastal Land Use Plan (**CLUP**) amendment, ..." [abbreviations used on next page, otherwise not defined]
 - b. Section 1.10: Are "(PI, 0.75 FAR)" and "(RM, 2178)" really "Zoning designations"? The Resolution previously says the Zoning is "PI" and "RM." The significance of the "2178" is not explained, but is apparently "Site Area [minimum square feet?] per Dwelling Unit" (= 20 dwelling units per acre?)
 - c. Section 1.11: The event on August 22 was a **presentation**, *not* a **public hearing** since the public was neither invited nor allowed to speak. This section should probably say the hearing was continued to September 5.
 - d. Section 2.2: see previous written comments. The public was told the comment period ended at 5:00 pm on August 12.
 - e. Section 3.6: I find the arguments for waiving the 10 acre minimum requirement for supplanting the Zoning Code with a PC Zoning District unpersuasive. I fail to see why 1.2 acres at this location is similar to 10 acres in other areas where PC texts are in effect. What other examples of similarly small PC Zoning Districts are there in the City?

- f. Section 4.2: As noted below, Exhibit “E” no longer includes the PC text, even though the approval says it does.
- g. **Site Development Review:**
 - i. B-5: “Mechanical equipment for the residential units ~~have~~ has been located within enclosures at the roof deck level ...”
 - ii. B-6: I fail to see how the 6-foot block wall is consistent with the Lido Village Design Guidelines vision of pedestrian openness and connectivity.
 - iii. B-11 : “... and 12 residential guest parking spaces, which ~~can be~~ are provided entirely on-site.”
 - iv. C-2: “... to accommodate and provide safe access for emergency vehicles, delivery trucks, and refuse ~~collections~~ collection vehicles, as determined by the City Traffic Engineer.”
- h. **Tentative Tract Map:**
 - i. I-1: “The applicant will be responsible for the payment of appropriate fair share, housing in-lieu, and park fees for the development of these new dwelling units as conditions of approval.”
 - ii. J-2: Abbreviation “SWPPP” is not explained.
- i. Exhibit “E” -- Zoning Map Amendment And **Lido Villas Planned Community Text** :
 - i. The former draft Resolution had a copy of the PC text at this point; this one does not.
- j. Exhibit “F” -- **Conditions of Approval** :
 - i. Condition 6: Does this mean the applicant might be eligible for a cash credit for the reduction in commercial area?
 - ii. Condition 9: “... in substantial conformance with the approved Tentative Tract Map No. ~~174555~~ 17555 dated May 16, 2013.” [? the map number is given differently in different places]
 - iii. Condition 11: “A total of 46 enclosed garage parking spaces and 12 ground level guest parking spaces shall be provided within ~~the~~ as illustrated on the approved plans.” [? possibly a word is missing]
 - iv. I have not had time to read the remainder of the conditions.
- k. Attachment No. PC 2 Revised Draft Planned Community Development Plan :
 - i. 1.0: “The Lido Villas Planned Community Development Plan (~~P~~ PCDP) is composed of 23 single family residential townhomes, totaling 63,592 square feet. It is located on the site across from the ~~current~~ former City Hall building and bounded by ...” Also, where is “the City’s Lido Village Concept Plan” available for inspection?
 - ii. 2.8. (Landscaping/Irrigation) : This seems partially redundant with 3.1.i (Irrigation Guidelines).
 - iii. 2.8. (Fences and Walls) : Again, why the requirement for a 6-foot wall in a pedestrian friendly community? And why are there two sections labeled “8”?
 - iv. 2.9 and 2.11: Is it supposed to be “electrical engineer” or “lighting engineer”?

- v. 2.10: Why is there is no section 2.10?
- vi. 2.15: Does this mean temporary structures and uses will *always* be allowed in this PC with no restrictions, and how does this mesh with the new *Prohibited Uses* language in 3.1?
- vii. 3.1.3.b (Floor Area per Unit): Is this *gross* floor area?
- viii. 3.1.3.d (Exceptions to Building Height): "*Deck railings may exceed the building height limit ~~and but~~ shall not exceed 35 feet 4 inches in height, ...*"
- ix. 3.1.3.g : "...shall be provided for the community (at a rate of 75 sq. ft. per dwelling unit) with ..."
- x. 3.1.3.h : I don't believe the tree species proposed match those allowed by the current *Official Tree List*, as required by the NBMC.
- xi. 3.1.3.h : Line 3 from end: "*Plant selection shall be harmonious ~~to~~ with the character of the project and surrounding projects ...*"
- xii. 3.1.3.j : "...shall be designed and maintained in a manner which ~~minimized~~ minimizes impacts on ..."
- xiii. 3.1.3.k : I don't believe the City currently has a person called "*Director of Planning*."

CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 100 Civic Center Drive
Thursday, August 22, 2013
REGULAR MEETING
6:30 p.m.

I. CALL TO ORDER - The meeting was called to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE – Commissioner Ameri

III. ROLL CALL

PRESENT: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker

ABSENT: None

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Marlene Burns, Administrative Assistant; Tony Brine, City Traffic Engineer; Jim Campbell, Principal Planner; Makana Nova, Assistant Planner; Rosalinh Ung, Associate Planner; Melinda Whelan, Assistant Planner; and Benjamin Zdeba, Assistant Planner

IV. ELECTION OF OFFICERS (CONTINUED FROM PREVIOUS MEETING)

1. Appointment to the General Plan/LCP Committee
 - a. Chair to appoint one additional member, and confirm existing appointments.

Chair Hillgren reported that Commissioner Myers agreed to serve on the General Plan/LCP Committee. He announced the appointment of Commissioner Myers to said Committee.

V. PUBLIC COMMENTS

Chair Hillgren invited those interested in addressing the Planning Commission to do so at this time.

Jim Mosher commented on the public hearings to be heard this evening and staff's respective recommendations. He opined that City staff should be neutral in all applications and emphasized that conduct at the hearing can contribute to the public's perception of openness and due process. He reported that Planning Commission hearings are regarded as quasi-judicial hearings thereby requiring full disclosure of communications received and recommended full disclosure of Ex Parte communications. Regarding due process, he believed that the Planning Commission's decisions must be based on accurate facts and felt that once the initial public period is closed, if there are new facts presented, the public period should be reopened so that the public has a chance to rebut on the accuracy of the information.

There being no others wishing to address the Planning Commission, Chair Hillgren closed the Public Comments portion of the meeting.

VI. REQUEST FOR CONTINUANCES

Deputy Community Development Director Wisneski reported receiving a request to continue Item No. 4, (Lido Villas - PA2012-146).

Chair Hillgren reported having conversations with the applicant, noted the importance of the matter for the City and indicated preference for having a presentation by staff, presently, to allow the Commission to understand the related issues. The applicants agreed and Chair Hillgren requested reordering the agenda to move Item No. 4 (Lido Villas - PA2012-146) as well as the Item No. 5 (Housing Element Update – PA2012-104) before Item No. 3 (Uptown Newport MSDR – PA2013-129), in the interest of time.

VII. CONSENT ITEMS**ITEM NO. 1 MINUTES OF AUGUST 8, 2013**

Recommended Action: Approve and file

Chair Hillgren acknowledged written comments submitted regarding the minutes.

Interested parties were invited to address the Planning Commission on this item, there was no response and Chair Hillgren closed public comments for this item.

Motion made by Vice Chair Tucker and seconded by Commissioner Brown and carried (6 – 1) to approve the minutes of August 8, 2013, as corrected.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, and Tucker

NOES: None

ABSTENTIONS: Lawler

ABSENT: None

Chair Hillgren addressed the process for hearing Public Hearing items.

VIII. PUBLIC HEARING ITEMS**ITEM NO. 2 HORMANN VARIANCE (PA2013-086)**

Site Location: 417 and 419 E. Balboa Boulevard

Assistant Planner Ben Zdeba presented details of the staff report including a description of the proposed project, existing conditions, Zoning Code requirements, particulars of the variance, the project site, location, lot size, surrounding properties, access, and background. He addressed setbacks, conformance with the Zoning Code, details of the addition, required findings for issuing a variance, and recommendations.

Interested parties were invited to address the Planning Commission on this item.

John Loomis, architect for the applicant, presented a brief history of the site and noted changes in Zoning over time. He addressed the fifty (50%) percent rule and other options considered including altering the existing building to conform with the setback requirements. He stated that per the advice of contractors the cheapest way to bring the property into conformance would be to demolish the existing building and reconstruct it. He reported that the option would not be financially feasible; therefore, the only option was to request a variance. He stated that there is no other way of making the property compliant unless it is completely demolished and rebuilt. Therefore, the variance is not a special privilege, but a necessity. He reported that the Fire Department is comfortable with the proposal and addressed compatibility with the neighborhood and benefits to the community. He noted the allowance of variance to deal with anomalies.

Vice Chair Tucker noted that the Planning Commission does not make policies but operates under existing policies. He addressed circumstances applicable to properties (not buildings) in consideration of variances and noted it does not take into account unusual circumstances as laid out by Mr. Loomis. He noted that Mr. Loomis can always appeal the issue to Council.

Mr. Loomis referenced "unique circumstances" and felt that it would apply to the building on the property noting that it is infeasible to remove the building.

Greg Hormann, property owner, reported that the non-conformance was not reported when he purchased the property. He commented on his intent to expand the property but explained that it is financially unfeasible to demolish the property. He indicated a belief that had the plans been submitted earlier, City staff would have supported the expansion, but that the application was postponed due to the architect's illness. He requested that the Planning Commission take into consideration those circumstances and the sequence of events in granting the variance request.

In response to an inquiry by Chair Hillgren, Mr. Hormann reported that Mr. Loomis had several meetings with the Planning Division before his illness and they were on board with the plan, but that subsequently, the Senior Planner assigned to the project retired.

Vice Chair Tucker referenced a letter indicating that the Senior Planner was on board with the plan. He noted that recommendations from staff are not always agreed to by the Planning Commission and that the Commission has the authority to approve or not approve recommendations. He doubted that the Planning Commission's action would be different if staff were recommending approval.

W.R. Dildine commented on a nearby property that is under similar conditions and expressed support of the variance, noting that the owners have made substantial improvements to the property. He felt that the project will help relieve existing parking problems in the area.

George Hajjar, adjacent neighbor, commented positively on the condition of properties in the area and felt that the subject property is "out of sync" with the area. He expressed concerns with access to his garage because of parked cars and felt that if the variance is allowed, he will continue to have difficulties accessing his property. He reported an existing gas meter that sticks out of the ground and felt it poses a danger and that it should be put underground. He expressed concerns with the project blocking his views and stated his support for denying the variance.

Jerry Bradfield, adjacent neighbor, spoke in support of the proposed variance and noted the uniqueness of the area. He addressed weekly rentals and related problems in the area and stressed that the applicant will be living in the residence. He commented positively on the applicant's efforts to integrate the old with the new. He encouraged the Planning Commission to approve the variance.

Dillon Colucci, adjacent neighbor, voiced support for the proposed variance and opined that if a property already has a structure on it, the structure would be included in the topography of the lot. He felt that the existing structure on the subject property meets the definition under "unique circumstances" and commented positively on the proposed project.

Ryan Snep, adjacent neighbor, addressed improved parking by the proposed project and addressed its compatibility with the surrounding area. He spoke in support of the proposed variance.

Jim Mosher felt that if the Planning Commission votes for the resolution for approval, it would need to be rewritten stating facts in support of the findings. If the Commission were to vote for the draft resolution of denial, he pointed out grammatical errors within the resolution.

There being no others wishing to address the Planning Commission on this item, Chair Hillgren closed the public hearing.

Commissioner Myers reported visiting the property, having carefully examined the report, and as a result stated his support of the findings and agreed with the unique circumstances applicable to the subject property, which would include the existing structure. He stated that he would vote against the resolution to deny the variance.

Commissioner Brown agreed with Commissioner Myers in terms of findings in support of the variance. He encouraged developing ideas to help the applicant proceed with the project. He addressed comments received in support of the project and felt that consideration should be given to the fact that the owner will reside on the property. In terms of the proposed square footage, he felt that there are comparable properties surrounding the subject site.

In response to an inquiry from Chair Hillgren, Assistant Planner Zdeba addressed the intent of setbacks and addressed differences between side and front setbacks and the requirements for each.

Ms. Wisneski addressed allowances relative to commercial versus residential zones.

Commissioner Kramer commented on a prior case under similar circumstances at 407 East Balboa Boulevard.

Mr. Zdeba noted that the property was considered prior to the adoption of the new Zoning Code and commented on the specific circumstances considered at the time. He further clarified that the modification permit granted under the old Zoning Code to 407 East Balboa Boulevard allowed an addition consistent with what is allowed by right in the new Zoning Code.

Commissioner Kramer commented on other physical features of the property.

Commissioner Ameri expressed sympathy for the applicant but felt that there are ways to reach the applicant's intent without having to demolish the property. He addressed the Planning Commission's limit to authority in terms of the ability change the Code. He expressed concerns with setting a precedent.

Commissioner Myers commented on the need to revise the resolution and continue the matter.

Assistant City Attorney Leonie Mulvihill reported that if the intent of the Commission is to consider a resolution for approval, it could be approved at this time if sufficient information is provided to have staff develop a resolution for approval.

The maker of the motion would need to articulate the findings.

Commissioner Kramer indicated he cannot support the findings and will vote against the motion.

Chair Hillgren stated that he cannot support the findings, noted that the code allows for expansion of the property but expressed concerns with the proposal to have the structure built to the front setback line. He indicated support for the applicant's efforts to improve the property but stressed the need to comply with the code.

Motion made by Commissioner Myers and seconded by Commissioner Brown and failed (2 – 5), to deny adoption of Resolution No. 1918 denying Variance No. VA2013-002 and support issuance of the variance based on the fact that unique circumstances and conditions exist on the property and that strict compliance with the Zoning Code would deprive the subject property of privileges enjoyed by other properties in the vicinity and the granting of a variance is necessary for the preservation and enjoyment of the property rights of the applicant and will not constitute special privilege or be inconsistent with zoning and will not be detrimental to the neighborhood. Facts in support would be that the property has been in existence for seventy-three (73) years. Special circumstances would include that the property was built prior to significant zoning changes, is currently well-maintained and that compliance with the Zoning Code would constitute an economic hardship for the homeowners.

AYES: Brown and Myers

NOES: Ameri, Hillgren, Kramer, Lawler, and Tucker

Motion made by Vice Chair Tucker and seconded by Commissioner Kramer and carried (5 – 2), to adopt Resolution No. 1918 denying Variance No. VA2013-002.

AYES: Ameri, Hillgren, Kramer, Lawler, and Tucker

NOES: Brown and Myers

ITEM NO. 4 LIDO VILLAS (PA2012-146)**Site Location:** 3303 and 3355 Via Lido

Assistant Planner, Makana Nova, presented details of the staff report addressing location, description of the project, General Plan, Coastal Land Use Plan, and Zoning Code amendments, Site Development Review, Tentative Tract Map, and Mitigated Negative Declaration. She addressed surrounding properties, properties associated with the project site, abandoned alley running through the property, existing conditions, parking, existing structures, density, and additional units. She reported details of the proposed amendments and noted that the appropriate tribal consultation notices had been distributed. She noted that the Coastal Commission has commented on the proposed land-use changes and loss of parking opportunities. Ms. Nova addressed development standards, the goals of the planned community, the site plan, number of proposed units, access, on-site parking, impacts to on-street parking, and reduction in traffic trips by the proposed changes in land uses. She addressed standard setbacks, proposed project-specific setbacks, elevations, limits to structure heights, architectural elements, and noted that the project is subject to the Lido Village Design Guidelines.

Ms. Nova emphasized the goals of the Lido Village Design Guidelines relative to compatibility to surrounding land uses, architectural theme, and the use of high-quality building materials. She addressed open space areas, common areas, landscaping, easements, emergency access, required improvements as part of the tract map approval, and the public comment period related to the Mitigated Negative Declaration. She listed the public comments received from other agencies and residents and referenced the mitigation monitoring program relative to air quality, cultural resources, and management of hazardous materials during demolition and construction. She presented findings and recommendations to continue the item to the Planning Commission meeting of September 5, 2013.

Vice Chair Tucker asked for a plan indicating which materials will be used on elevations and commented on the Design Guidelines.

Principal Planner Jim Campbell reported that the Design Guidelines were reviewed by a Citizens Advisory Panel and were adopted by resolution by the City Council. He added that the Planning Commission would determine if the project is consistent with the Design Guidelines.

Assistant City Attorney Mulvihill added that the Design Guidelines are meant to represent, conceptually, what the design in the area should look like. They are guidelines for the Planning Commission to consider whether the area conforms to those guidelines.

Vice Chair Tucker commented on the Conditions of Approval and inquired regarding landscaping versus hardscaping.

Ms. Nova commented on spaces that have been identified as common areas and that there is a requirement to provide landscaping wherever possible adding that a lot of the interior hardscape will be used for vehicle circulation.

Vice Chair Tucker felt that the plan lacks landscaping near the areas where units are located. He wondered regarding whether anyone is able to buy the units or whether it would be for people with ambulatory disabilities.

Ms. Nova reported they are not exclusive to persons with disabilities.

In reply to Chair Hillgren's inquiry regarding a requirement for ADA compliant units, Ms. Nova responded in the affirmative and reported that the Building Division is charged with ensuring compliance with ADA requirements at plan check. She also addressed park and housing in-lieu fees, clarified that the fee is charged on a per unit basis, and that the fee will be required prior to recordation of the tract map.

Assistant City Attorney Mulvihill reported that this procedure is standard practice.

Ms. Nova noted that it is not the City's standard practice to review CC&Rs but that conditions could be added similarly to what is being proposed under the Uptown project.

Vice Chair Tucker felt that language should be added allowing the City an opportunity to enforce the CC&Rs. He referenced the PC text and a provision requiring a six-foot block wall between the commercial property and this property.

Ms. Nova reported that a six-foot block wall is proposed for the project and noted it is typical and required per the Zoning Code.

Vice Chair Tucker referenced a list of permitted and prohibited uses with the PC text and suggested eliminating reference to the prohibited uses or inserting language that prohibited uses are all of those uses not listed in the permitted uses. He addressed parking requirements and suggested adding language that garages be used for cars rather than storage. He reiterated the request for a list and example of the materials to be used.

Commissioner Kramer commented that this is not the first time the Commission has asked for a materials board and felt that it should be a standard practice as part of the application process.

Ms. Wisneski stated that material boards are available for this project.

Discussion followed regarding encouraging development in similar areas, being careful that what the Planning Commission approves is what the project will look like, the quality of the wood siding to be used, and including appropriate provisions within the CC&Rs.

Commissioner Brown referenced a letter from Robert Hawkins regarding the Design Guidelines and requested comments regarding the validity of his points.

Mr. Campbell reported receiving the letter this afternoon and noted that staff has not had a chance to review it. He agreed with Mr. Hawkins regarding the guidelines not being enforceable regulations and addressed the need to be consistent with the guidelines and compatible with the area. He requested an opportunity to review the matter further and return to the Planning Commission at the September 5, 2013, meeting. He reported that the 423 analysis is not an environmental issue but relates to requiring a vote of the electorate and is a procedural issue.

Vice Chair Tucker commented on the analysis and addressed the units requiring a General Plan amendment and those already authorized for residential. He noted that Charter Section 423 deals with density and effects on traffic. He encouraged staff to respond to the letter.

Commissioner Brown expressed concerns with parking and agreed with Vice Chair Tucker's recommendation regarding including language that garages be used for cars rather than storage.

Commissioner Kramer indicated support for the application but expressed concerns regarding the quality of the architectural design.

Ms. Nova indicated that the matter can be expanded upon within the PC text and that architectural design and building maintenance would be regulated under the CC&Rs.

Commissioner Kramer felt it would be appropriate to add detail within the PC text regarding architectural design requirements.

Ms. Nova reported that the project conforms to the Lido Village Design Guidelines, overall. She agreed that the issue merits additional consideration and discussion.

Deputy Community Development Director Wisneski added that design issues can be further discussed and addressed at the September 5th Planning Commission meeting.

Discussion followed regarding relocation of the existing church.

Commissioner Ameri expressed concerns regarding guest parking.

Vice Chair Tucker referenced the Coastal Section of the Design Guidelines and highlighted pictures illustrating some of the concepts.

Chair Hillgren reported on a similar project by the developer that can be seen in order to obtain a sense of the materials to be used. He addressed the importance of setbacks and height limitations.

Ms. Nova reported on the establishment of setbacks on all streets facing frontages and addressed differences in first- and second-floor setbacks and future improvement of adjacent rights-of-ways for pedestrian uses. She added that trees on street-facing frontages will be replaced with new street trees and reported the heights of existing and proposed structures.

Mr. Campbell commented on the various heights and impacts to surrounding areas.

Motion made by Vice Chair Tucker and seconded by Commissioner Brown and carried (7 – 0) to continue the matter to the Planning Commission meeting of September 5, 2013.

AYES: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker
NOES: None

ITEM NO. 5 HOUSING ELEMENT UPDATE (PA2012-104)
Site Location: 100 Civic Center Dr., Newport Beach

Assistant Planner Melinda Whelan presented details of the final draft of the Housing Element and noted it is the only element within the General Plan that requires review by the State the Department of Housing and Community Development (HCD) which has specific guidelines and requirements. She addressed the goals and purpose of the Housing Element and presented background and previous review of the matter as well as consideration and action by Council. She highlighted the changes recommended by Council relative to the removal of the Inclusionary Housing Program. Ms. Whelan addressed findings and presented recommendations as listed in the report.

Discussion followed regarding applicability of the in-lieu affordable housing fee and options available to Council regarding the matter.

Interested parties were invited to address the Planning Commission on this item.

Jim Mosher commented on the removal of the in-lieu affordable housing fee and streamlining the process with HCD. He referenced a conference call and changes made and felt that the changes are not specified in the report and should be included in Council packets. He addressed a CEQA finding within the resolution and suggested including addressing a finding of some kind.

There being no others wishing to address the Planning Commission, Chair Hillgren closed the public hearing.

Motion made by Vice Chair Tucker and seconded by Commissioner Brown and carried (7 – 0) to adopt a resolution recommending adoption of the 2014-2021 Housing Element Update to the City Council.

AYES: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker
NOES: None

ITEM NO. 3 UPTOWN NEWPORT MSDR (PA2013-129)
Site Location: 4311-4321 Jamboree Road

Commissioner Lawler reported a business interest with a property located near the subject property and recused himself from hearing the aforementioned time and requested being excused for the remainder of the meeting. Commissioner Lawler's request was granted and he departed the chambers at this time.

Associate Planner Rosalinh Ung presented details of the report and addressed approved entitlements for the project, identification of a two-phase process, the purpose of the Master Site Development Review, and compliance with zoning documents. She addressed architectural focal points at each end of the entry drive at the Fairchild intersection and recommendations that the Planning Commission review these for compliance with applicable provisions. She referenced written comments received from Jim Mosher and noted that the Zoning Administrator recently approved a Tentative Parcel Map to subdivide the existing two (2) parcels into four (4) parcels. She noted that no development for improvements are proposed as part of the application and as a condition of approval, a Tentative Parcel Map cannot be recorded until the Master Site application is approved by the Planning Commission; therefore, the legal description stated in the draft resolution is valid. She presented recommendations as stated in the report.

In response to Chair Hillgren's inquiry, Ms. Ung clarified that the Commission is being asked to review all of the architectural design including landscaping, lighting, fencing, grading, and site improvements as a Master Development for the entire project. She added that staff is seeking direction regarding the architectural design of the main entryways.

Discussion followed regarding review of the environmental effects.

Ms. Ung explained that the Commission is not being asked to review environmental issues, just merely recognize the previously-approved environmental document and the legal statement for noticing purposes and action at this time. She noted that the Commission previously considered and approved the environmental impact review report for this project.

Ensuing discussion pertained to ensuring that the plans are reviewed against the proper materials.

Ms. Ung explained the Master Site Development Review requirements are stated within the zoning documents.

Chair Hillgren reported that he does not have the final version of the documents needed to evaluate the matter and is not as prepared as he would like to be.

Vice Chair Tucker commented on the plans he was able to review and questioned if staff has checked them in relation to the Design Guidelines. He noted that the Planning Commission has reviewed and has acted on many of the plans and emphasized the need to review the architectural building elevations.

Commissioner Ameri addressed previous consideration of and actions related to the project. He noted that the main concerns at this time relate to the architectural building elevations. He indicated that the intention is not to restart the process or reconsider the elements in the plans, but rather consider the architecture elements in core areas and review the proposed building materials.

Chair Hillgren reiterated his concern that what is being reviewed is what was previously approved.

Chair Hillgren invited the applicant to address the Planning Commission.

Bill Shopoff, The Shopoff Group, provided a PowerPoint presentation addressing background, project approvals received, attempts at and agreements in order to be good neighbors, and elements of the Master Development Site Plan. He addressed the purpose of the review to ensure that the plan is proceeding in a consistent manner and complies with the PC text and in conformance with applicable regulations. He noted prior meetings with staff and neighbors and addressed changes made including enhancements to "paseos," pedestrian access, access to retail uses, and setbacks.

Trent Noll of Valley Crest addressed the Landscape Plan including proposed trees along the spine street, canopy trees, planting of parkways, secondary streets leading into the neighborhood, turn-around areas and details of the two (2) proposed parks and private amenity opportunities. He presented details of the phase-one park plan consists of a promenade for activities, a multipurpose lawn and stage, multipurpose gathering areas, and access from the residential units to the parks.

Kendall Nilmeier of MVE explained how the building elevations and architecture are reflective of the Design Guidelines. He identified retail zones, amenity spaces, and opportunities for street activation. He noted the attempts at fitting in with the existing commercial zone by using strong, predominantly contemporary styles in architecture to blend in with the environment. He addressed massing and composition, the entry at Fairchild, and design elements of the various building elevations. Mr. Nilmeier addressed the use enhanced materials, the architectural elements for façades, and referenced color and material boards submitted for the Planning Commission's consideration.

Vice Chair Tucker asked regarding the composition of the primary building materials and it was noted that they are primarily plaster and stucco.

Mr. Nilmeier stated that a range of options are available for the materials and noted the enhanced materials identified.

Members of the Planning Commission carefully reviewed the color and materials boards at this juncture.

Commissioner Kramer commended the applicant for committing to use enhanced materials. He expressed concerns regarding the corner entrance on Jamboree and Fairchild and felt that it should be an iconic entrance and that enhancements are needed in the design for that portion of the project. He commented on the "institutional" look of the building similar to what would exist in Irvine and felt that further consideration should be given to the design.

Chair Hillgren commended the applicant on the quality and level of detail in the color and materials board and reiterated his concern of not having the current set of criteria to compare with what is being proposed. He commented positively on the mass issue and wondered regarding the cohesiveness and theme of the architecture. He agreed with Commissioner Kramer's comment regarding the "institutional" look of Building 2 and commented positively on the quality of materials and encouraged enhanced architecture at ground levels of buildings. He noted that the comments are meant to be constructive and addressed connections to the Koll Center. He addressed signage and the need for using quality materials for same.

Commissioner Brown envisioned areas where people can connect such as outdoor cafes, delis, and specialized grocery stores. He commented positively regarding the plans for the parks and felt that providing a sense of cohesion and that representing the area as a "town" would be beneficial.

Mr. Shopoff addressed leasing and commercial areas and noted the need to place retail areas on the exterior with visibility, signalization, and activity.

Commissioner Ameri felt that what was presented at this time is a huge improvement over what was previously presented and was glad that many of the recommendations made by the Planning Commission were implemented. He addressed undulation in the buildings and the façades and hoped that the building materials used will be of the best quality. He stated that this is not an extension of another residential community and felt that the developer has done a good job of transitioning from the Koll Center area to residential areas. He felt that the architectural variety will help to differentiate the buildings. Commissioner Ameri commented on the public facilities near the park areas as well as residential amenities. He commented positively on the architecture and building materials, overall.

Mr. Shopoff reported that it is expected that retail uses will include food services for residents as well as commercial neighbors.

Vice Chair Tucker commented positively on the project, overall and the execution of the Master Site improvements. He expressed concerns regarding the individual buildings and what they will look like since the applicant will not be constructing them. He indicated acceptance for the elevations for the interior of the

project but expressed concerns with Buildings 1 and 2. He felt that there should be another vertical element in the mid-block area of enhanced materials on Building 1, Elevation C, but felt that smooth plaster should not be used along the buildings fronting Jamboree. He suggested deleting smooth plaster as an enhanced material along the Jamboree building frontage and adding "other enhanced-quality material". He noted that the Planning Commission has already approved the site plan.

Mr. Shopoff agreed with Vice Chair Tucker's suggestion regarding the use of smooth plaster and addressed adding a vertical element on Building 1.

Chair Hillgren commented positively on the design but expressed concerns regarding the entry drive.

Vice Chair Tucker reiterated that need to make the building look less "institutional."

Interested parties were invited to address the Planning Commission on this matter.

Jim Mosher reminded the Commission that every other action related to the project has been a recommendation that went to Council. He noted that the action tonight will be final and suggested the Commission consider continuing the item to a later meeting in order to address all of the issues necessary to make an informed decision. He commented on the transfer of school district jurisdiction and Mr. Shopoff's assertion that he would be working with them regarding the matter, but that they have not been contacted by Mr. Shopoff. He hoped that the Commission will consider commitments rather than just promises.

There being no others wishing to address the Planning Commission, Chair Hillgren closed the public hearing.

Chair Hillgren reiterated that he does not have the current criteria with which to compare the proposed architecture and indicated that he is not prepared to act at this time.

Vice Chair Tucker recommended changing Sheet A-3 to include the proper text and more of the enhanced materials shown. He suggested language for the text including enhanced materials/ finish shall include brick, stone, tile, fiber smith panels or other similarly enhanced quality materials and deleting smooth plaster from the list. He referenced Building 2 Frontages F and E and suggested the use of more enhanced materials.

Commissioner Ameri reiterated his understanding that the item for consideration at this time is the review of the architectural design and building materials. He agreed with Vice Chair Tucker's recommendations and felt that the Commission should be able act based on the addition of those recommendations. He did not feel the Commission should delay the project by reviewing the additional enhancements recommended. He felt that what is presented is a "flavor" of what the Commission wants and that the buildings will most likely go through a redesign process in the future. He stated that the City would be obligated to ensure that the design concepts are followed. He indicated that he is satisfied with what has been presented.

Motion made by Commissioner Ameri to adopt draft resolution finding that all environmental effects of the Uptown Newport Planned Community have been previously addressed by the certification of Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) and approving Master Site Development Review No. SD2013-002 with changes as recommended by per discussion above.

Chair Hillgren commented on the amount of work done by the applicant and the responsibility of the Planning Commission. He noted the need to be specific regarding what the Commission wants.

Commissioner Ameri indicated his desire to move the project forward.

The motion died for lack of a second.

Commissioner Brown felt that there needs to be a clarification as to who determines whether or not what is being proposed is consistent with the PC text. He stated that if that task belongs to the Commission, there needs to be additional information provided.

Discussion followed regarding the need for staff to review the plan carefully.

Vice Chair Tucker did not feel he needs to see the documents but acknowledged there is a lot of material to review and agreed to continue the matter to allow an opportunity for detailed review of the documents and criteria with which to compare the architectural design proposed.

Ms. Wisneski reported that it is staff's role to ensure that the project complies with the PC text.

Commissioner Ameri noted that the Commission trusts the research conducted by staff and felt that if the Commission decides to continue the item because it does not feel the project is consistent with what was approved, then the Commission is questioning staff's capabilities.

Commissioner Kramer stated he would like the applicant to enhance the entrance to be more iconic and create a less "institutional" look on Building 2 using a higher level of enhancements and finishes.

Commissioner Ameri suggested modifying the motion to include a caveat that subsequent discussion will be limited to the consistency of the project with the PC text and the use of architectural enhancements and building materials.

Chair Hillgren noted various issues discussed and needing to be addressed and reported that the Commission will vote within two (2) weeks based on the changes made and consistency with the PC text.

Motion made by Commissioner Kramer and seconded by Vice Chair Tucker and carried (6 – 0 – 1) to continue the matter to the Planning Commission meeting of September 5, 2013, and direct the applicant to implement as proposed and discussed above.

AYES:	Ameri, Brown, Hillgren, Kramer, Myers, and Tucker
NOES:	None
RECUSED:	Lawler

IX. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION - None

ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Committee Updates:

1. Land Use Element Amendment Advisory Committee

Ms. Wisneski presented a brief update on the Land Use Element Amendment Advisory Committee noting that they met last week and listed items considered. She announced a Public Information meeting on September 9, 2013, and the cancellation of the City Council meeting of August 27, 2013.

2. General Plan/Local Coastal Program Implementation Committee

Ms. Wisneski reported that the General Plan/Local Coastal Program Implementation Committee has not met recently.

ITEM NO. 8 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

Chair Hillgren addressed the need for a spreadsheet of upcoming projects and reported that he will work with Deputy Community Development Director Wisneski to develop one. He reported the need to have discussions regarding distribution of documents to better assist the Commission in preparation for meetings.

Commissioner Ameri commented on the possibility of reducing the size of hard copies of plans submitted to the Commission for ease of readability.

ITEM NO. 9 REQUESTS FOR EXCUSED ABSENCES

Chair Hillgren reported that he will not be in attendance at the September 19, 2013, Planning Commission meeting.

X. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 10:40 p.m.

The agenda for the Regular Meeting was posted on August 16, 2013, at 3:00 p.m., on the City Hall Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

Bradley Hillgren, Chair

Kory Kramer, Secretary

CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 100 Civic Center Drive
Thursday, August 22, 2013
REGULAR MEETING
6:30 p.m.

I. CALL TO ORDER - The meeting was called to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE – Commissioner Ameri

III. ROLL CALL

PRESENT: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker

ABSENT: None

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Marlene Burns, Administrative Assistant; Tony Brine, City Traffic Engineer; Jim Campbell, Principal Planner; Makana Nova, Assistant Planner; Rosalinh Ung, Associate Planner; Melinda Whelan, Assistant Planner; and Benjamin Zdeba, Assistant Planner

IV. ELECTION OF OFFICERS (CONTINUED FROM PREVIOUS MEETING)

1. Appointment to the General Plan/LCP Committee
 - a. Chair to appoint one additional member, and confirm existing appointments.

Chair Hillgren reported that Commissioner Myers agreed to serve on the General Plan/LCP Committee. He announced the appointment of Commissioner Myers to said Committee.

V. PUBLIC COMMENTS

Chair Hillgren invited those interested in addressing the Planning Commission to do so at this time.

Jim Mosher commented on the public hearings to be heard this evening and staff's respective recommendations. He opined that City staff should be neutral in all applications and emphasized that conduct at the hearing can contribute to the public's perception of openness and due process. He reported that Planning Commission hearings are regarded as quasi-judicial hearings thereby requiring full disclosure of communications received and recommended full disclosure of Ex Parte communications. Regarding due process, he believed that the Planning Commission's decisions must be based on accurate facts and felt that once the initial public period is closed, if there are new facts presented, the public period should be reopened so that the public has a chance to rebut on the accuracy of the information.

There being no others wishing to address the Planning Commission, Chair Hillgren closed the Public Comments portion of the meeting.

VI. REQUEST FOR CONTINUANCES

Deputy Community Development Director Wisneski reported receiving a request to continue Item No. 4, (Lido Villas - PA2012-146).

Chair Hillgren reported having conversations with the applicant, noted the importance of the matter for the City and indicated preference for having a presentation by staff, presently, to allow the Commission to understand the ~~related primary~~ issues in order to facilitate their review of the materials in advance of the meeting to be held on September 5th. The applicants agreed and Chair Hillgren requested reordering the agenda to move Item No. 4 (Lido Villas - PA2012-146) as well as the Item No. 5 (Housing Element Update – PA2012-104) before Item No. 3 (Uptown Newport MSDR – PA2013-129), in the interest of time.

Commissioner Kramer commented on a prior case under similar circumstances at 407 East Balboa Boulevard.

Mr. Zdeba noted that the property was considered prior to the adoption of the new Zoning Code and commented on the specific circumstances considered at the time. He further clarified that the modification permit granted under the old Zoning Code to 407 East Balboa Boulevard allowed an addition consistent with what is allowed by right in the new Zoning Code.

Commissioner Kramer commented on other physical features of the property.

Commissioner Ameri expressed sympathy for the applicant but felt that there are ways to reach the applicant's intent without having to demolish the property. He addressed the Planning Commission's limit to authority in terms of the ability change the Code. He expressed concerns with setting a precedent.

Commissioner Myers commented on the need to revise the resolution and continue the matter.

Assistant City Attorney Leonie Mulvihill reported that if the intent of the Commission is to consider a resolution for approval, it could be approved at this time if sufficient information is provided to have staff develop a resolution for approval.

The maker of the motion would need to articulate the findings.

Commissioner Kramer indicated he cannot support the findings and will vote against the motion.

Chair Hillgren stated that he encouraged the redevelopment of the property but cannot support the findings. He, noted that the code allows for reasonable expansion of the property but expressed concerns with that the proposal to have the structure built to the eliminate the front setback line is inconsistent with the primary goal of the zoning code. He indicated support for the applicant's efforts to improve the property but stressed the need to comply with the goals of the code.

Motion made by Commissioner Myers and seconded by Commissioner Brown and failed (2 – 5), to deny adoption of Resolution No. 1918 denying Variance No. VA2013-002 and support issuance of the variance based on the fact that unique circumstances and conditions exist on the property and that strict compliance with the Zoning Code would deprive the subject property of privileges enjoyed by other properties in the vicinity and the granting of a variance is necessary for the preservation and enjoyment of the property rights of the applicant and will not constitute special privilege or be inconsistent with zoning and will not be detrimental to the neighborhood. Facts in support would be that the property has been in existence for seventy-three (73) years. Special circumstances would include that the property was built prior to significant zoning changes, is currently well-maintained and that compliance with the Zoning Code would constitute an economic hardship for the homeowners.

AYES: Brown and Myers

NOES: Ameri, Hillgren, Kramer, Lawler, and Tucker

Motion made by Vice Chair Tucker and seconded by Commissioner Kramer and carried (5 – 2), to adopt Resolution No. 1918 denying Variance No. VA2013-002.

AYES: Ameri, Hillgren, Kramer, Lawler, and Tucker

NOES: Brown and Myers

ITEM NO. 3 UPTOWN NEWPORT MS DR (PA2013-129)
Site Location: 4311-4321 Jamboree Road

Commissioner Lawler reported a business interest with a property located near the subject property and recused himself from hearing the aforementioned time and requested being excused for the remainder of the meeting. Commissioner Lawler's request was granted and he departed the chambers at this time.

Associate Planner Rosalinh Ung presented details of the report and addressed approved entitlements for the project, identification of a two-phase process, the purpose of the Master Site Development Review, and compliance with zoning documents. She addressed architectural focal points at each end of the entry drive at the Fairchild intersection and recommendations that the Planning Commission review these for compliance with applicable provisions. She referenced written comments received from Jim Mosher and noted that the Zoning Administrator recently approved a Tentative Parcel Map to subdivide the existing two (2) parcels into four (4) parcels. She noted that no development for improvements are proposed as part of the application and as a condition of approval, a Tentative Parcel Map cannot be recorded until the Master Site application is approved by the Planning Commission; therefore, the legal description stated in the draft resolution is valid. She presented recommendations as stated in the report.

In response to Chair Hillgren's inquiry and concern regarding the commission's ability to act without receipt of copies of the finalized agreements from the previous public hearings, Ms. Ung clarified that the Commission is being asked to review all of the architectural design including landscaping, lighting, fencing, grading, and site improvements as a Master Development for the entire project. She added that staff is seeking direction regarding the architectural design of the main entryways.

Discussion followed regarding review of the environmental effects.

Ms. Ung explained that the Commission is not being asked to review environmental issues, just merely recognize the previously-approved environmental document and the legal statement for noticing purposes and action at this time. She noted that the Commission previously considered and approved the environmental impact review report for this project.

Ensuing discussion pertained to ensuring that the plans are reviewed against the proper materials.

Ms. Ung explained the Master Site Development Review requirements are stated within the zoning documents.

Chair Hillgren reported that he does not have the final version of the documents needed to evaluate the matter and is not as prepared as he would like to be.

Vice Chair Tucker commented on the plans he was able to review and questioned if staff has checked them in relation to the Design Guidelines. He noted that the Planning Commission has reviewed and has acted on many of the plans and emphasized the need to review the architectural building elevations.

Commissioner Ameri addressed previous consideration of and actions related to the project. He noted that the main concerns at this time relate to the architectural building elevations. He indicated that the intention is not to restart the process or reconsider the elements in the plans, but rather consider the architecture elements in core areas and review the proposed building materials.

Chair Hillgren reiterated his concern that what is being reviewed is what compared with what was previously approved.

Chair Hillgren invited the applicant to address the Planning Commission.

Bill Shopoff, The Shopoff Group, provided a PowerPoint presentation addressing background, project approvals received, attempts at and agreements in order to be good neighbors, and elements of the Master Development Site Plan. He addressed the purpose of the review to ensure that the plan is proceeding in a

consistent manner and complies with the PC text and in conformance with applicable regulations. He noted prior meetings with staff and neighbors and addressed changes made including enhancements to "paseos," pedestrian access, access to retail uses, and setbacks.

Trent Noll of Valley Crest addressed the Landscape Plan including proposed trees along the spine street, canopy trees, planting of parkways, secondary streets leading into the neighborhood, turn-around areas and details of the two (2) proposed parks and private amenity opportunities. He presented details of the phase-one park plan consists of a promenade for activities, a multipurpose lawn and stage, multipurpose gathering areas, and access from the residential units to the parks.

Kendall Nilmeier of MVE explained how the building elevations and architecture are reflective of the Design Guidelines. He identified retail zones, amenity spaces, and opportunities for street activation. He noted the attempts at fitting in with the existing commercial zone by using strong, predominantly contemporary styles in architecture to blend in with the environment. He addressed massing and composition, the entry at Fairchild, and design elements of the various building elevations. Mr. Nilmeier addressed the use enhanced materials, the architectural elements for façades, and referenced color and material boards submitted for the Planning Commission's consideration.

Vice Chair Tucker asked regarding the composition of the primary building materials and it was noted that they are primarily plaster and stucco.

Mr. Nilmeier stated that a range of options are available for the materials and noted the enhanced materials identified.

Members of the Planning Commission carefully reviewed the color and materials boards at this juncture.

Commissioner Kramer commended the applicant for committing to use enhanced materials. He expressed concerns regarding the corner entrance on Jamboree and Fairchild and felt that it should be an iconic entrance and that enhancements are needed in the design for that portion of the project. He commented on the "institutional" look of the building similar to what would exist in Irvine and felt that further consideration should be given to the design.

Chair Hillgren commended the applicant on the quality and level of detail in the color and materials board and reiterated his concern of not having the current set of criteria to compare with what is being proposed. He commented positively on the massing ing of the buildings and overall articulation of the architecture but had concerns issue and wondered regarding the cohesiveness and theme of the architecture. He agreed with Commissioner Kramer's comment regarding the "institutional" look of Building 2 – particularly at the Jamboree entrance which looks more like a business campus than a residential town center. He and commented positively on the quality of materials and encouraged enhanced architecture at ground levels of buildings where the quality will best serve residents and visitors. He noted that the comments are meant to be constructive and- He addressed the need for good connections to the Koll Center properties in order to achieve a successful mixed use environment and does not believe the plans presented achieve this as well as they could. He addressed signage and the need for using better quality materials which are consistent with the overall quality of the project for same. He noted that all comments are meant to be constructive and believed the commission has consistently made comments and recommendations intended to improve the overall success of the project.

Commissioner Brown envisioned areas where people can connect such as outdoor cafes, delis, and specialized grocery stores. He commented positively regarding the plans for the parks and felt that providing a sense of cohesion and that representing the area as a "town" would be beneficial.

Mr. Shopoff addressed leasing and commercial areas and noted the need to place retail areas on the exterior with visibility, signalization, and activity.

Commissioner Ameri felt that what was presented at this time is a huge improvement over what was previously presented and was glad that many of the recommendations made by the Planning Commission were implemented. He addressed undulation in the buildings and the façades and hoped that the building materials used will be of the best quality. He stated that this is not an extension of another residential

community and felt that the developer has done a good job of transitioning from the Koll Center area to residential areas. He felt that the architectural variety will help to differentiate the buildings. Commissioner Ameri commented on the public facilities near the park areas as well as residential amenities. He commented positively on the architecture and building materials, overall.

Mr. Shopoff reported that it is expected that retail uses will include food services for residents as well as commercial neighbors.

Vice Chair Tucker commented positively on the project, overall and the execution of the Master Site improvements. He expressed concerns regarding the individual buildings and what they will look like since the applicant will not be constructing them. He indicated acceptance for the elevations for the interior of the project but expressed concerns with Buildings 1 and 2. He felt that there should be another vertical element in the mid-block area of enhanced materials on Building 1, Elevation C, but felt that smooth plaster should not be used along the buildings fronting Jamboree. He suggested deleting smooth plaster as an enhanced material along the Jamboree building frontage and adding "other enhanced-quality material". He noted that the Planning Commission has already approved the site plan.

Mr. Shopoff agreed with Vice Chair Tucker's suggestion regarding the use of smooth plaster and addressed adding a vertical element on Building 1.

Chair Hillgren commented positively on the design but expressed concerns regarding the entry drive for building #2.

Vice Chair Tucker reiterated that need to make the building look less "institutional."

Interested parties were invited to address the Planning Commission on this matter.

Jim Mosher reminded the Commission that every other action related to the project has been a recommendation that went to Council. He noted that the action tonight will be final and suggested the Commission consider continuing the item to a later meeting in order to address all of the issues necessary to make an informed decision. He commented on the transfer of school district jurisdiction and Mr. Shopoff's assertion that he would be working with them regarding the matter, but that they have not been contacted by Mr. Shopoff. He hoped that the Commission will consider commitments rather than just promises.

There being no others wishing to address the Planning Commission, Chair Hillgren closed the public hearing.

Chair Hillgren reiterated that he does not have the current criteria with which to compare the proposed architecture and indicated that he is not prepared to act at this time.

Vice Chair Tucker recommended changing Sheet A-3 to include the proper text and more of the enhanced materials shown. He suggested language for the text including enhanced materials/ finish shall include brick, stone, tile, fiber smith panels or other similarly enhanced quality materials and deleting smooth plaster from the list. He referenced Building 2 Frontages F and E and suggested the use of more enhanced materials.

Commissioner Ameri reiterated his understanding that the item for consideration at this time is the review of the architectural design and building materials. He agreed with Vice Chair Tucker's recommendations and felt that the Commission should be able act based on the addition of those recommendations. He did not feel the Commission should delay the project by reviewing the additional enhancements recommended. He felt that what is presented is a "flavor" of what the Commission wants and that the buildings will most likely go through a redesign process in the future. He stated that the City would be obligated to ensure that the design concepts are followed. He indicated that he is satisfied with what has been presented.

Motion made by Commissioner Ameri to adopt draft resolution finding that all environmental effects of the Uptown Newport Planned Community have been previously addressed by the certification of Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) and approving Master Site Development Review No. SD2013-002 with changes as recommended by per discussion above.

Chair Hillgren commented on the amount of work done by the applicant and the responsibility of the Planning Commission. He noted the need for any motion to be specific regarding what the Commission wants.

Commissioner Ameri indicated his desire to move the project forward.

The motion died for lack of a second.

Commissioner Brown felt that there needs to be a clarification as to who determines whether or not what is being proposed is consistent with the PC text. He stated that if that task belongs to the Commission, there needs to be additional information provided.

Discussion followed regarding the need for staff to review the plan carefully.

Vice Chair Tucker did not feel he needs to see the documents but acknowledged there is a lot of material to review and agreed to continue the matter to allow an opportunity for detailed review of the documents and criteria with which to compare the architectural design proposed.

Ms. Wisneski reported that it is staff's role to ensure that the project complies with the PC text.

Commissioner Ameri noted that the Commission trusts the research conducted by staff and felt that if the Commission decides to continue the item because it does not feel the project is consistent with what was approved, then the Commission is questioning staff's capabilities.

Commissioner Kramer stated he would like the applicant to enhance the entrance to be more iconic and create a less "institutional" look on Building 2 using a higher level of enhancements and finishes.

Commissioner Ameri suggested modifying the motion to include a caveat that subsequent discussion will be limited to the consistency of the project with the PC text and the use of architectural enhancements and building materials.

Chair Hillgren noted various issues discussed and needing to be addressed and reported that the Commission will vote within two (2) weeks based on the changes made and consistency with the PC text.

Motion made by Commissioner Kramer and seconded by Vice Chair Tucker and carried (6 – 0 – 1) to continue the matter to the Planning Commission meeting of September 5, 2013, and direct the applicant to implement as proposed and discussed above.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, and Tucker
NOES: None
RECUSED: Lawler

IX. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION - None

ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Committee Updates:

1. Land Use Element Amendment Advisory Committee

Ms. Wisneski presented a brief update on the Land Use Element Amendment Advisory Committee noting that they met last week and listed items considered. She announced a Public Information meeting on September 9, 2013, and the cancellation of the City Council meeting of August 27, 2013.

2. General Plan/Local Coastal Program Implementation Committee

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

September 5, 2013 Meeting
Agenda Item 2

SUBJECT: Uptown Newport MSDR (PA2013-129)
4311-4321 Jamboree Road
▪ Master Site Development Review No. SD2013-002

APPLICANT: Shopoff Management, Inc. (Uptown Newport LP)

PLANNER: Rosalinh Ung, Associate Planner
(949) 644-3208, rung@newportbeachca.gov

On August 22, 2013, the Planning Commission continued the Uptown Newport Master Site Development Review application to the September 5, 2013, meeting and directed the applicant to make the following changes:

- Enhance the project's main entry at Jamboree Road and Fairchild to be more iconic;
- Redesign Building 2 so it has less of the "institutional" architectural theme by using more high levels of finished materials; and
- Modify Notes 7 and 8 on Sheet A3 (Building 1 - Elevation C) to require that the applicant shall use enhanced materials/finish as listed (i.e., stone, tile, limestone plaster, and fiber cement panel), and remove smooth plaster as a part of enhanced materials/finish list and replace it with "or similar enhanced quality materials approved by the Community Development Director".

The applicant has agreed to the requested changes and the revised plans are forthcoming. It is anticipated that the revised plans will be completed and delivered to the Commission and electronically posted for the general public on September 3, 2013.


During the August 22nd meeting, the Planning Commission also commented on the availability of the approved zoning documents for this project. They are: 1) Land Use, Development Standards & Procedures; 2) Phasing Plan; and 3) Design Guidelines. These documents were approved by the City Council on February 26, 2013, and are found online by the following link: <http://newportbeachca.gov/index.aspx?page=2029>

The draft resolution also has been revised (Attachment PC 1) to include the typographical corrections that were identified at the August 22nd meeting.

Prepared by:


Rosalinh Ung
Associate Planner

Submitted by:


Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

PC 1 Revised Draft Resolution of Approval

Attachment No. PC 1

Revised Draft Resolution of
Approval

RESOLUTION NO. ____

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
NEWPORT BEACH APPROVING MASTER SITE DEVELOPMENT
REVIEW NO. SD2013-002 FOR THE 25.05 ACRE PLANNED COMMUNITY
KNOWN AS UPTOWN NEWPORT LOCATED AT 4311-4321 JAMBOREE
ROAD (~~PA2011-134~~PA2013-129)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS
FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

- A. An application was filed by Uptown Newport LP (“Uptown Newport” or “Applicant”) with respect to a 25.05-acre property generally located on the north side of Jamboree Road between Birch Street and the intersection of Von Karman Avenue and MacArthur Boulevard, legally described on Exhibit A, which is attached hereto and incorporated herein by reference (the “Property”), requesting approval of the Master Site Development Review (MSDR) application for the development of up to 1,244 residential dwelling units, 11,500 square feet of retail commercial uses, and 2.05 acres of parklands (the “Project”).
- B. The Property has a General Plan designation of Mixed-Use District Horizontal-2 (MU-H2), and is zoned Uptown Newport Planned Community (PC-58) District.
- C. On February 26, 2013, the City Council certified the Uptown Newport Final Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) and approved the following entitlement applications for the Project:
 - 1. Planned Community Development Plan Amendment No. PD2011-003: An amendment to Planned Community Development Plan #15 (Koll Center Planned Community) to remove the subject property from the Koll Center Planned Community, pursuant to Chapter 20.66 (Amendments) of the Municipal Code.
 - 2. Planned Community Development Plan Adoption No. PC2012-001: A Planned Community Development Plan (PCDP) adoption to establish the allowable land uses, general development regulations, and implementation and administrative procedures, which would serve as the zoning document for the construction of up to 1,244 residential units, 11,500 square feet of retail commercial, and 2.05 acres of park space to be built in two (2) separate phases on a 25.05-acre site, pursuant to Chapter 20.56 of the Municipal Code. The PCDP has three (3) components: 1) Land Uses, Development Standards & Procedures; 2) Phasing Plan; and 3) Design Guidelines.
 - 3. Tentative Tract Map No. NT2012-002: A tentative tract map to establish lots for residential development purposes pursuant to Title 19 of the Municipal Code.

4. Traffic Study No. TS2012-005: A traffic study pursuant to Chapter 15.40 (Traffic Phasing Ordinance) of the Municipal Code.
 5. Affordable Housing Implementation Plan No. AH2012-001: A program specifying how the proposed project would meet the City's affordable housing requirements, pursuant to Chapter 19.53 (Inclusionary Housing) and Chapter 20.32 (Density Bonus) of the Municipal Code.
 6. Development Agreement No. DA2012-003 (adopted on March 12, 2013): A Development Agreement between the applicant and the City of Newport Beach describing development rights and public benefits, pursuant to Section 15.45.020.A.2.a of the Municipal Code and General Plan Land Use Policy LU6.15.12.
- D. ~~A~~pPublic hearings ~~was~~were held on August 22 and September 5, 2013, in the City Hall Council Chambers, at 100 Civic Center Drive, Newport Beach, California. Public notices ~~s~~ of the time, place, and purpose of the aforesaid meetings ~~s was~~were provided in accordance with the Newport Beach Municipal Code ("NBMC"). The staff reports ~~s~~, and evidence, both written and oral, were presented to and considered by the Planning Commission at the scheduled hearings ~~s~~.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

- A. All significant environmental effects for the PCDP have been adequately addressed in the previously certified Environmental Impact Report No. ER2012-001 (SCH No. 2010051094) ("EIR"), which included a mitigation, monitoring and reporting program and statement of overriding considerations, and the City of Newport Beach intends to use said document for the approval of the subject MSDR application and its implementation. Copies of the previously prepared environmental document are available for public review and inspection at the Planning Division or at the City of Newport Beach website at www.newportbeachca.gov/ceqadocuments.
- B. The MSDR application is a subsequent application required by the PCDP in order to ensure that the subject property is developed consistent with the previously approved entitlements identified above.
- C. None of the conditions described in Section 15162 of the CEQA Guidelines calling for preparation of a subsequent or supplemental EIR have occurred, and the MSDR application and its implementation do not require changes or additions to the EIR pursuant to Section 15164 of the CEQA Guidelines.
- D. No new effects would occur, nor would a substantial increase in the severity of previously identified significant effects occur as the result of this approval as the MSDR application identifies the same previously approved project with refined detailed drawings, no increase in intensity, and no changes to the development standards.

- E. There are no additional reasonable alternative~~s~~ or mitigation measures that should be considered in conjunction with the MSDR application or its implementation.
- F. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees and damages which may be awarded to a successful challenger.

SECTION 3. FINDINGS.

In accordance with Section 4.1 of the Land Uses, Development Standards ~~&~~and Procedures (LUDSP) of the PCDP, the purpose of the Master Site Development Review is to ensure that the Uptown Newport Project is developed consistent with the PCDP, Development Agreement, applicable environmental mitigation measures, and applicable City Codes and standards. The following consistency findings and facts in support of the MSDR application are set forth:

Finding

- A. *The MSDR application is in compliance with the provisions of the Land Uses, Development Standards and Procedures of the PCDP.*

Fact in Support of Finding

- A1. The LUDSP provides for a maximum height of 75 feet for low-rise and mid-rise buildings and a maximum height of 150 feet for high-rise portions of buildings. The proposed prototypical building elevations are in compliance with these height restrictions.
- A2. Section 3.3 of the LUDSP identifies a network of streets centered around the internal Spine Street and traffic roundabout, and Section 3.4 allows for parking along internal streets and within integrated structured parking. The proposed MSDR plans depict street improvements for both phases that establish clear and convenient access to individual development parcels, structured parking entrances, and street parking consistent with the Master Site Plan of the PCDP and Tentative Tract Map No. 17438. The MSDR plans also emphasize pedestrian connectivity, paseos, public open space, and accessibility as required by the PCDP.
- A3. Section 3.7 of the LUDSP requires public parks, on-site recreational amenities and open space. The MSDR plans identify areas for residential amenities, open space and balconies throughout the project consistent with this requirement.

Finding

- B. *The MSDR application is consistent with the Phasing Plan of the PCDP.*

Fact in Support of Finding

B1. The MSDR application includes Phases 1 and 2 development plans that are consistent with the Phasing Plan of the PCDP. Each plan set contained landscape plans, wall and fence plans, lighting plans, signage plans, and civil engineering plans designed considering the phased nature of the project. The prototypical architectural building elevations for Phase 1 and for Phase 2 are illustrated in the Phase 1 plan set.

C. *The MSDR application is consistent with the Design Guidelines of the PCDP.*

Fact in Support of Finding

C1. The MSDR plans depict the ten framework principles identified in the Design Guidelines: (1) a distinct high-density, mixed-use residential village; (2) a legible internal roadway circulation with ample access to all portions of the site; (3) a sequence of spaces promoting clear way-finding; (4) incorporation of neighborhood-serving ground-level retail uses; (5) creation of neighborhood public park space as a principal focus for the village; (6) housing opportunities to serve the needs of residents; (7) pedestrian orientation with pedestrian-scaled streets and greenbelts that break up large blocks and provide connectivity; (8) on-street parking; (9) architectural massing that provides variety and interest with spatial definition along internal streets and pedestrian scale elements; and (10) establishment of a landscape character that unifies and enhances streets, paseos, and other components of the public realm.

C2. The proposed prototypical architectural building elevations identify a distinct multi-family residential village with residential stoops, balconies, and retail storefronts. Sheets A1-A8 of the Phase 1 plan set demonstrate the architectural design/theme for the entire project that will guide the preparation of Phase 2 plans to ensure consistent designs between the phases. A variety of colors, materials and architectural character are also shown on the building elevation plans. The Jamboree Road frontage contains building height variations and major and minor massing breaks in accordance with Section 3.3.3 of the Design Guidelines. The provided massing breaks avoid continuous uninterrupted building planes and provide shade and shadow.

C3. The Phase 1 and Phase 2 street improvement and landscape plans are consistent with pedestrian connectivity and circulation goals and connect residential buildings with the on-site retail, parks, and off-site adjacencies.

C4. The landscaping unifies and enhances the project design, and incorporates plants that adhere to the City's low water use standards consistent with the City's drought tolerant/water efficient landscape ordinance.

C5. The MSDR plans depict a distinct, high-density, mixed-use village that incorporates various styles, materials, colors, and heights providing Architectural interest

expressing a high quality environment consistent with the Design Guidelines of the PCDP. Massing breaks avoid uninterrupted building planes and highlight the efficient arrangement of the on-site structures and their relationship to adjacent developments.

- C6. Section 2.2.1 of the Design Guidelines identifies Master Site Improvements including site preparation, backbone storm drainage, sanitary sewer systems, reclaimed water distribution systems, street improvements, fencing and walls, park improvements, landscape improvements, streetlight and lighting improvements, dry utilities and master community signage. As stated above, the MSDR application identifies project specific details and certain Master Site Improvements, including preliminary grading plans, preliminary street improvements plans, fencing and wall details, and landscape improvement plans.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- A. The Planning Commission of the City of Newport Beach hereby approves Master Site Development Review No. SD2013-002, subject to the conditions set forth in Exhibit B, which is attached hereto and incorporated by reference.
- B. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS ~~22nd~~5th DAY OF ~~AUGUST~~SEPTEMBER, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Bradley Hillgren, Chairman

BY: _____
Kory Kramer, Secretary

EXHIBIT A
LEGAL DESCRIPTION

Being a subdivision of Lots 1 and 2 of Tract No. 7953, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 310, Pages 7 to 11 inclusive, of Miscellaneous Maps, recorded of said County.

EXHIBIT B
CONDITIONS OF APPROVAL

MASTER SITE DEVELOPMENT REVIEW NO. SD2013-002

Planning Division Conditions

1. The expiration date of Master Site Development Review No. SD2013-002 shall be consistent with the term of Development Agreement No. DA2012-003 (the "Development Agreement").
2. Any substantial modification to the approved Master Site Development Review plans, as determined by the Community Development Director, shall require an amendment to this Master Site Development Review application or the processing of a new application.
3. The final design of two (2), one-acre neighborhood public parks shall be consistent with Master Site Development Review No. SD2013-002 and subject to the review and approval of the City of Newport Beach Parks Beach and Recreation Commission.
4. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the property owner or the leasing agent.
5. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the City's approval of the Uptown Newport project including, but not limited to, the approval of the Master Site Development Review No. SD2013-002. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand, from time to time, any amount owed to the City pursuant to the indemnification requirements prescribed in this condition. The provisions herein shall not apply to the extent such damage, liability or claim is caused by the willful misconduct or sole active negligence of the City or the City's officers, officials, agents, employees, or representatives.

Fire Department Conditions

6. Emergency access roads shall be 26 feet wide within 30 feet of a fire hydrant (both sides of hydrant) with no vehicle parking allowed in the 30 feet.
7. Fire hydrant locations shall be determined based on the spacing and fire flow requirements.
8. A separate fire flow plan shall be required for each future building structure.
9. Fire lane marking and fire sign heights shall be provided as per Newport Beach Guideline C.02.

Public Works Conditions

10. Prior to commencement of demolition and grading of Phases 1 and 2 of the project, the applicant shall submit a construction management and delivery plan for each phase separately to be reviewed and approved by the Public Works Department. The plan shall include discussion of the overall project phasing; parking arrangements for the site during construction; anticipated haul routes and construction mitigation. Upon approval of the plan, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved plan.
11. Traffic control and truck route plans for Phases 1 and 2 shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.
12. All improvements shall comply with the City's sight distance requirement per City Standard 100-L.
13. All traffic related signage shall be a minimum of 7 feet in height, measured from the bottom of sign.
14. All handicap parking stalls and loading zones shall be per current ADA requirements. Path of travel shall be shown on plan and minimum of 48 inches clearance per ADA. Ramps required at tops of loading zones. All handicap stalls shall be located at the ends of aisle, not in the center, of angled parking.

From: Ken Nilmeier [KNilmeier@mve-architects.com]
Sent: Tuesday, September 03, 2013 11:33 AM
To: Ung, Rosalinh
Cc: Kristin Stoyanova; Tim Beuchat; brupp@shopoff.com
Subject: Summary of Changes to Uptown Newport Submittal

September 3, 2013

In response to Planning Commission comments from the August 22, 2013 hearing, the Applicant has provided modifications to the architectural drawings that had comprised a portion of the Uptown Newport July 19, 2013 submittal documents. The formatting and sheet number remained constant.

The changes to the exhibits include the following:

Building 1: Changes were made to the proposed corner tower element located at the corner of Jamboree and Fairchild. Portions of the building adjacent to the tower were also modified as needed to complete the architectural composition. This design is to be considered an alternative to the July 19, 2013 submittal. The original design is to still be considered a valid option.

Sheet A1:

- Re-design of the corner "tower" element;
- The area designated for enhanced materials on the tower element includes only the first two floors ("base" element) in response to the change; and
- Change in language in the notes section pertaining to enhanced materials.

Sheet A2:

- Change in language in the notes section pertaining to enhanced materials.

Sheet A3

- Re-design of the corner "tower" element.
- The area designated for enhanced materials on the tower element includes only the first two floors ("base" element) in response to the design change.
- Designation of additional areas along the Jamboree façade for enhanced materials in four locations; and
- Change in language in the notes section pertaining to enhanced materials.

Building 2: The Jamboree (F) and Secondary Entry (E) elevations been revised to emphasize a more residential character.

Sheet A4

- Change in color to the plaster on the northerly (as viewed to the left side of the elevation) single bay massing element
- Change in language in the notes section pertaining to enhanced materials.

Sheet A5

- Adjustments to the massing element on the corner at Jamboree (left side of the elevation drawing) to include a slightly wider form. This element is now designated for enhanced materials;
- Enhanced materials designations are also identified for additional vertical elements layered on the façade;
- Colors were slightly modified to be more saturated in order to create more interest in the elevation;
- Change in language in the notes section pertaining to enhanced materials.



NOTES

- 1: COMMUNITY FOCAL POINT WITH ENHANCED BASE AND VARIED WINDOW DETAILING AT DIFFERENT FLOORS
- 2: VARIATION IN STOREFRONTS AND DETAILING AT BASE
- 3: PEDESTRIAN ACCESS TO RETAIL FROM GARAGE
- 4: ONE-STORY STEP DOWN
- 5: RECESSED BALCONIES
- 6: HIGHER CEILING WITH TALLER GLASS
- 7: TRIM AT COLOR CHANGE; BASE/MIDDLE/ TOP PROPORTION
- 8: JULIET BALCONIES
- 9: COMMUNITY FOCAL POINT WITH ENHANCED MATERIALS AND DETAILS AT CORNER
- 10: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE STONE, TILE, LIMESTONE PLASTER AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR.





NOTES

- 1: COMMUNITY FOCAL POINT: CORNER LEASING LOBBY OR RESIDENT AMENITY WITH DOUBLE HEIGHT GLAZING
- 2: ACTIVE RESIDENTIAL USE RELATING TO STREET
- 3: VEHICULAR ENTRY RELATES TO MASSING AND BUILDING DESIGN
- 4: RESIDENTIAL STOOPS
- 5: CORNER GLASS AND BALCONIES
- 6: MAJOR MASSING BREAK
- 7: VARIATION IN RETAIL STOREFRONTS AND DETAILING AT BASE
- 8: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE BRICK, STONE, TILE, FIBER CEMENT PANEL AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR.
- 9: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE STONE, TILE, LIMESTONE PLASTER AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR.





NOTES

- 1: COMMUNITY FOCAL POINT WITH ENHANCED MATERIALS AND DETAILS AT CORNER
- 2: CORNER RETAIL
- 3: MAJOR MASSING BREAK
- 4: BALCONY
- 5: CANOPY
- 6: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE STONE, TILE, LIMESTONE PLASTER AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR.
- 7: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE BRICK, STONE, TILE, FIBER CEMENT PANEL AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR.





NOTES

- 1: CORNER LOBBY OR RESIDENT AMENITY WITH DOUBLE HEIGHT GLAZING
- 2: RESIDENTIAL STOOP
- 3: VEHICULAR ENTRY RELATES TO MASSING AND BUILDING DESIGN
- 4: MAJOR MASSING BREAK
- 5: COMMUNITY FOCAL POINT: LEASING LOBBY WITH DOUBLE HEIGHT GLAZING AND ENHANCED MATERIALS
- 6: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE TILE, FIBER CEMENT PANEL, METAL PANEL, LIMESTONE PLASTER AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR.

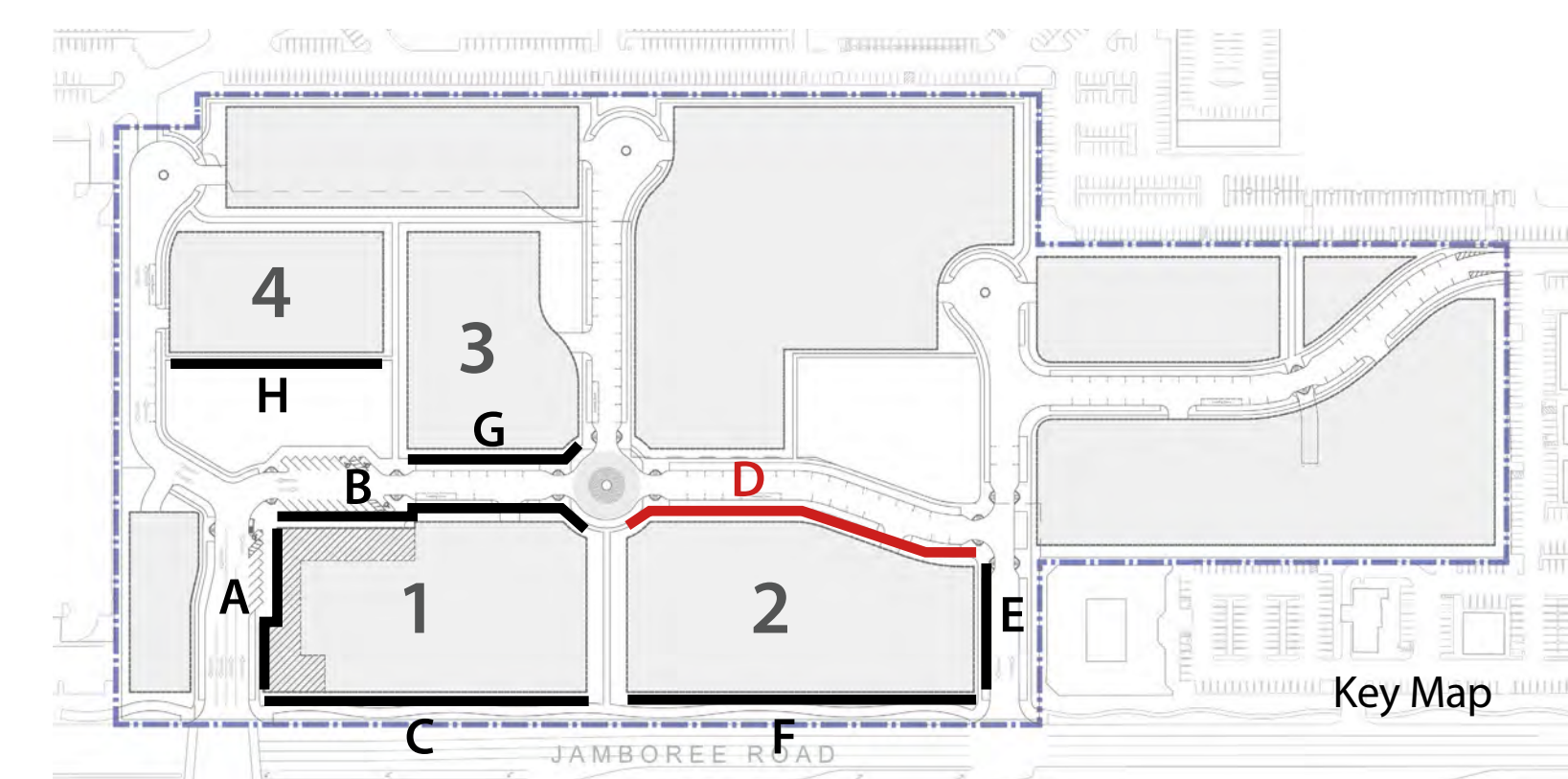


PROTOTYPICAL BUILDING ELEVATIONS

Uptown Newport

Uptown Newport LP

Date: 09-03-2013
 Scale: 3/32" = 1'
 0' 16' 32'



SHEET

A4

6 OF 28



NOTES

- 1: CORNER BREAK WITH ONE-STORY STEP DOWN
- 2: BALCONY
- 3: CORNER LOBBY OR RESIDENT AMENITY WITH DOUBLE HEIGHT GLAZING
- 4: CANOPY
- 5: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE TILE, FIBER CEMENT PANEL, METAL PANEL, LIMESTONE PLASTER AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR



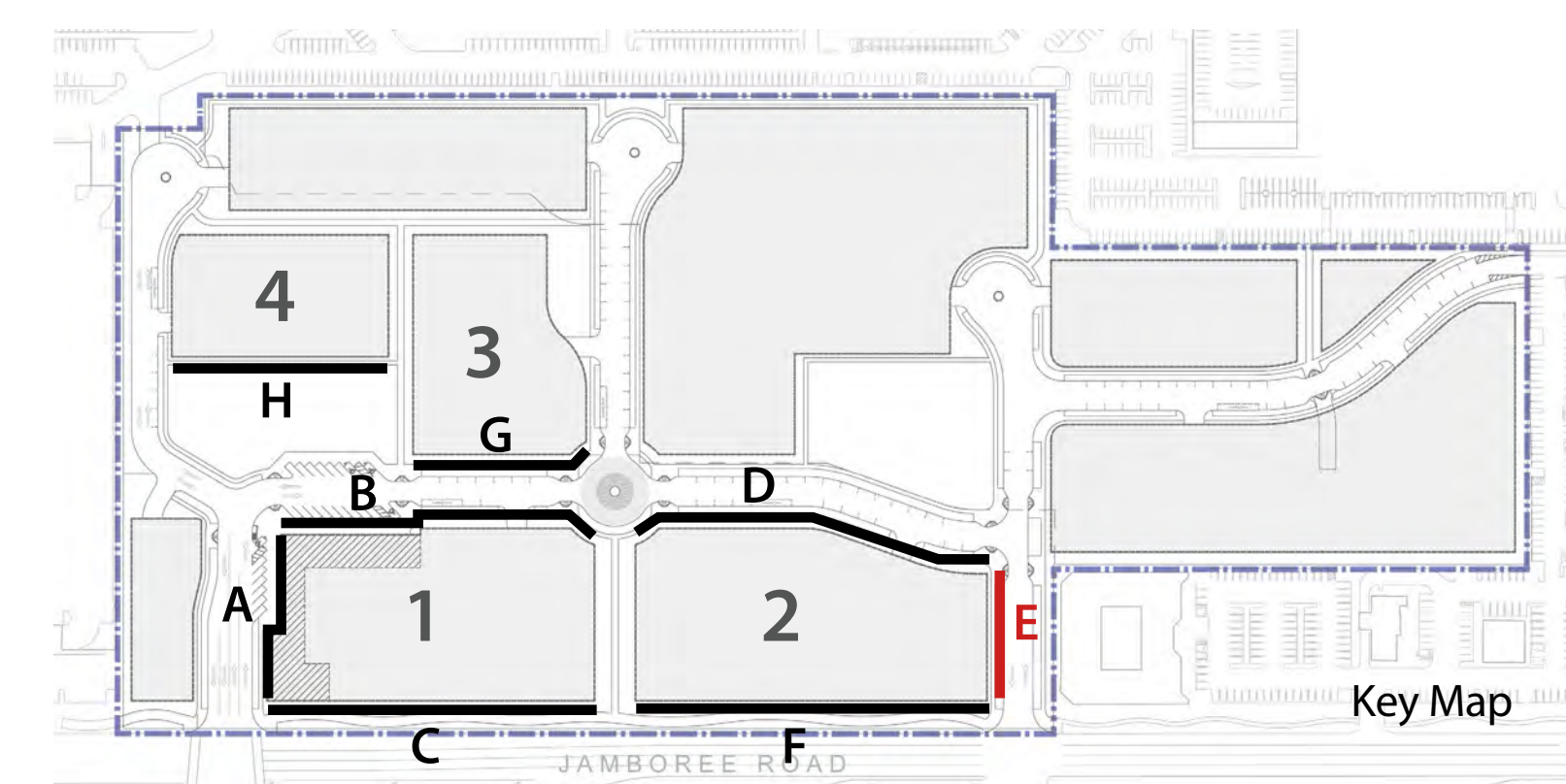
BUILDING 2, ELEVATION E

PROTOTYPICAL BUILDING ELEVATIONS



Uptown Newport
Uptown Newport LP

Date: 09-03-2013
Scale: 3/32" = 1'
0' 16' 32'



SHEET

A5

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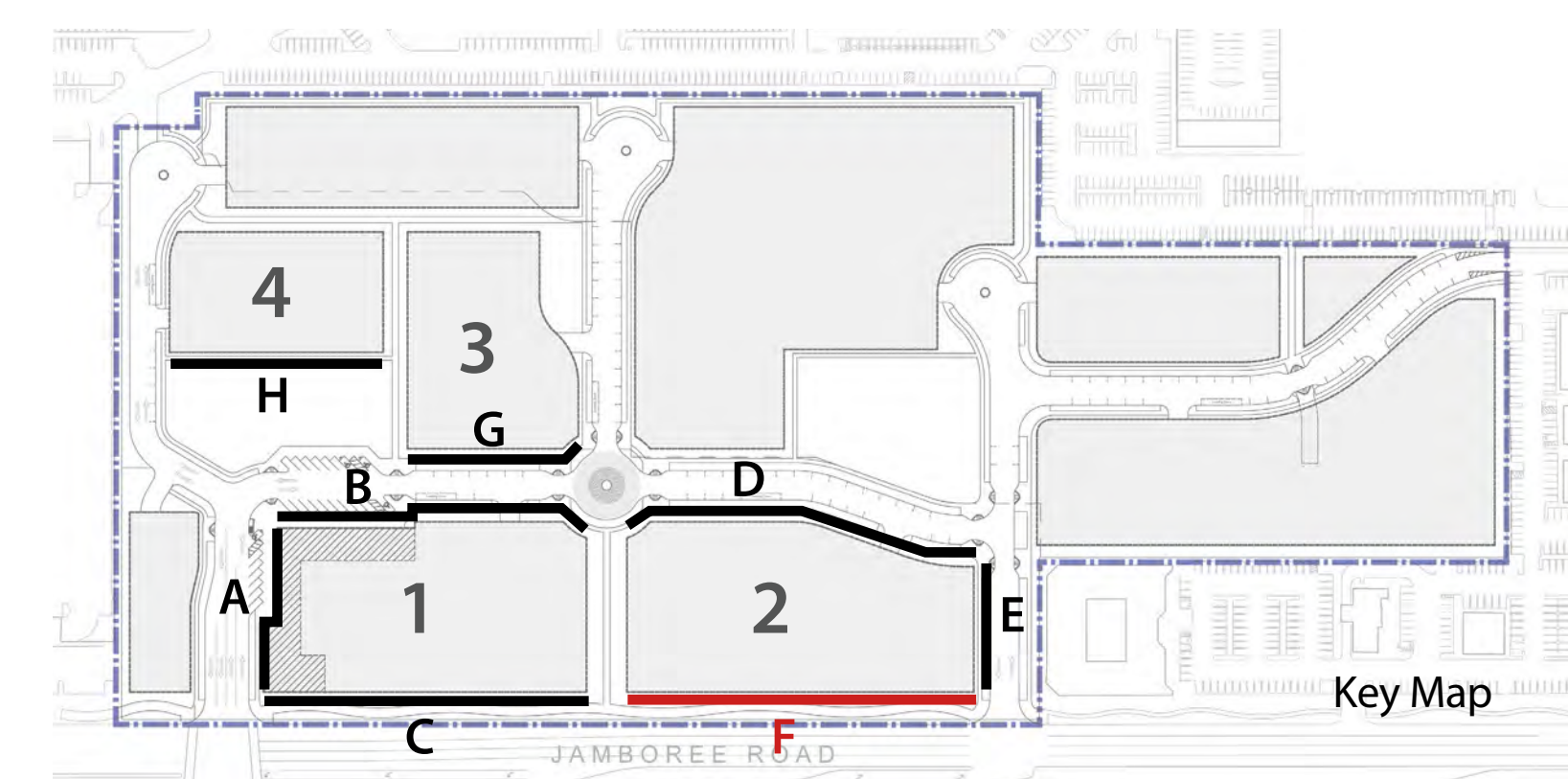
NOTES

- 1: CORNER BREAK WITH ONE-STORY STEP DOWN
- 2: CANOPY
- 3: BALCONY
- 4: MAJOR MASSING BREAK
- 5: BAY WINDOWS
- 6: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE TILE, FIBER CEMENT PANEL, METAL PANEL, LIMESTONE PLASTER AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR



PROTOTYPICAL BUILDING ELEVATIONS
Uptown Newport
 Uptown Newport LP

Date: 09-03-2013
 Scale: 3/32" = 1'
 0' 16' 32'

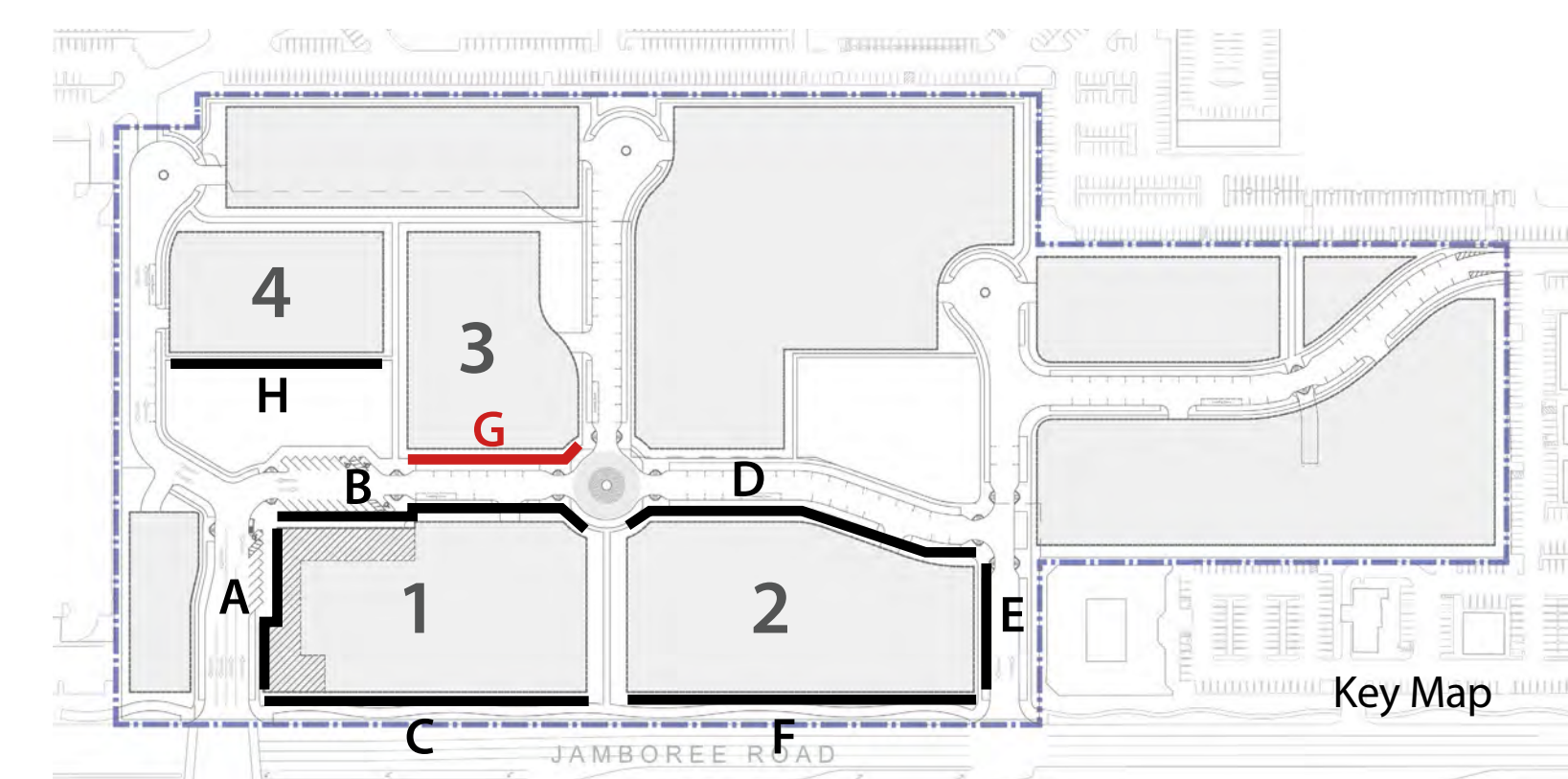


SHEET
A6
 8 OF 28



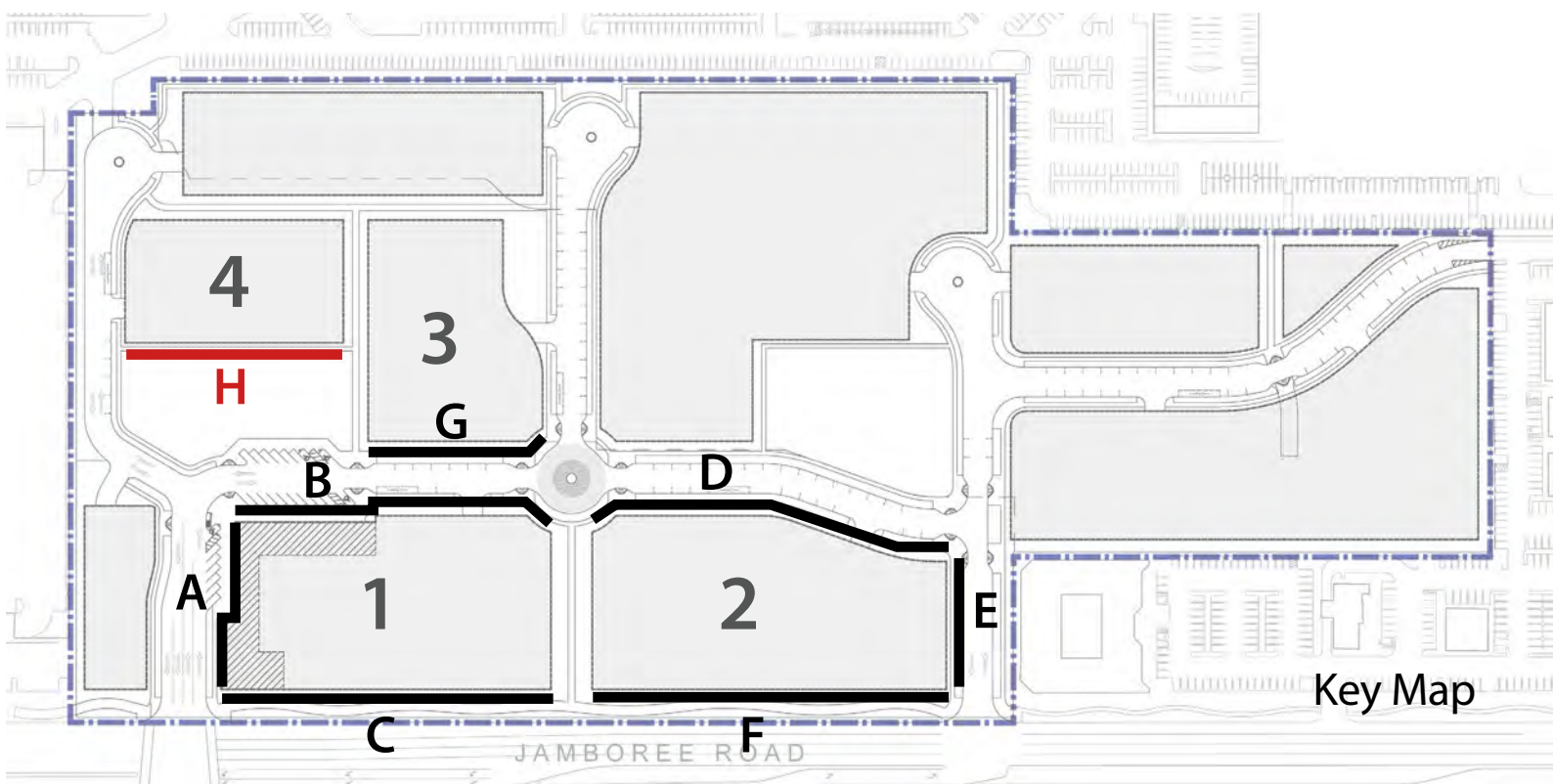
NOTES

- 1: COMMUNITY FOCAL POINT: CORNER LOBBY OR RESIDENT AMENITY WITH ENHANCED MATERIALS AND ONE-STORY STEP DOWN
- 2: BALCONY
- 3: ACTIVE RESIDENTIAL USE RELATING TO STREET
- 4: COMMUNITY FOCAL POINT: CORNER LEASING LOBBY OR RESIDENT AMENITY WITH DOUBLE HEIGHT GLAZING AND EXPANDED CORNER GLASS
- 5: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE TILE, CONCRETE, FIBER CEMENT PANEL AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR





- NOTES**
- 1: CORNER TOWER ELEMENT
 - 2: LEASING LOBBY OR RESIDENT AMENITY WITH DOUBLE HEIGHT GLAZING
 - 3: RESIDENT STOOP/PATIO
 - 4: MINOR MASSING BREAK
 - 5: CANOPY
 - 6: BALCONY
 - 7: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE STONE, TILE, FIBER CEMENT SIDING AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR



UPTOWN NEWPORT

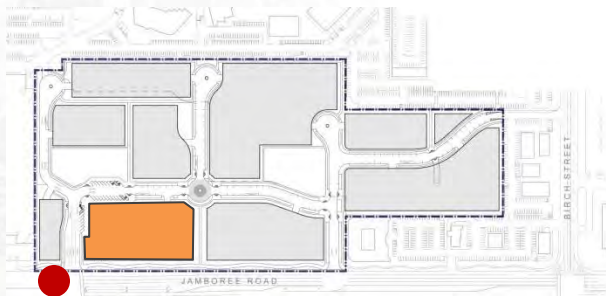
Planning Commission Hearing
September 5, 2013





UPTOWN NEWPORT SITE PLAN

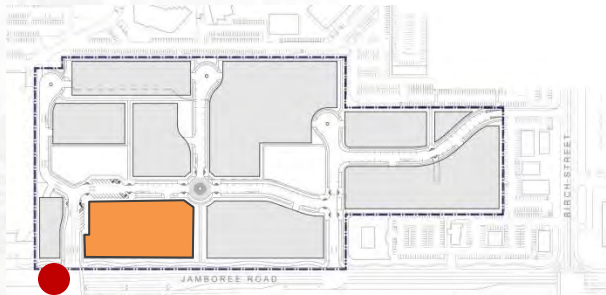
UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN



Building 1 – July Submittal

ARCHITECTURE

UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN



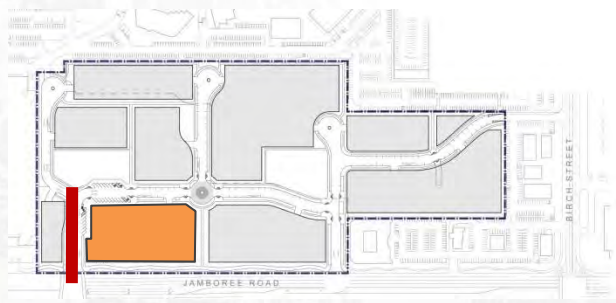
Building 1 – Current Submittal

ARCHITECTURE

UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN

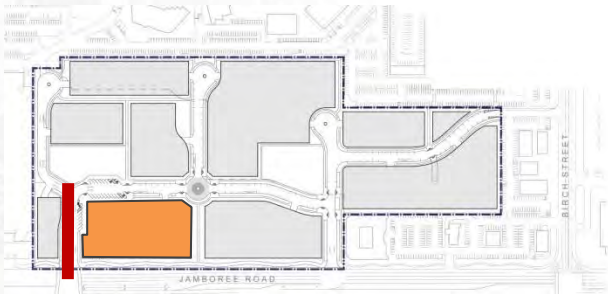


BUILDING 1, ELEVATION A



Building 1 – July Submittal

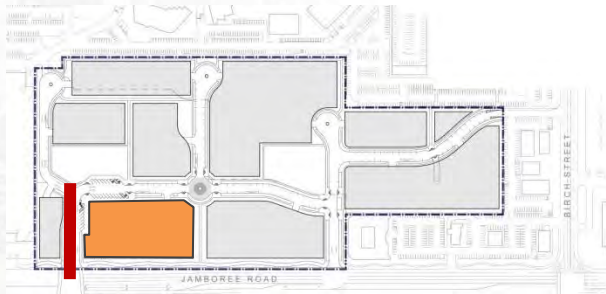
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Building 1 – Current Submittal

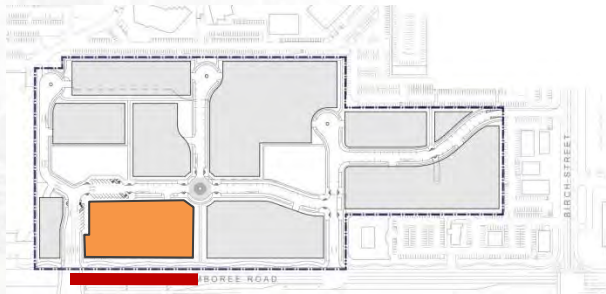
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UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN



Building 1 – Enhanced Material Areas

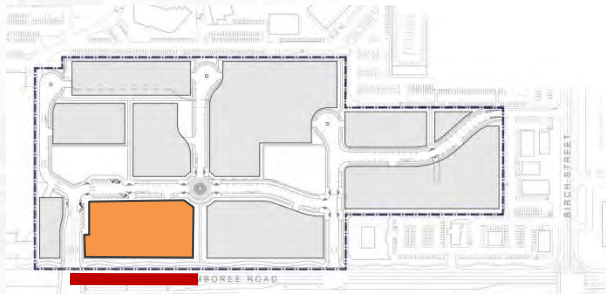
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Building 1 – July Submittal

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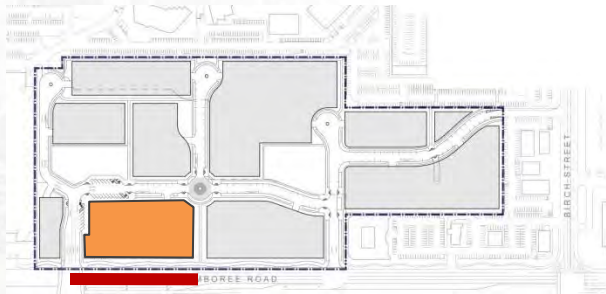
UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN



Building 1 – Current Submittal

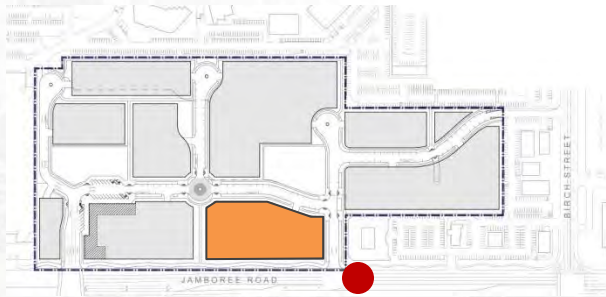
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UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN



Building 1 – Enhanced Material Areas

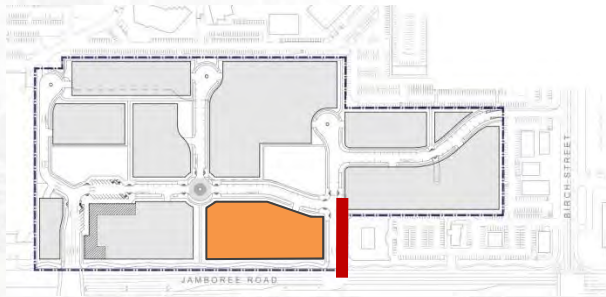
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Building 2 – Current Submittal

ARCHITECTURE

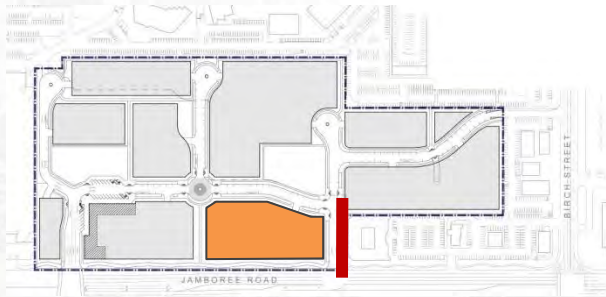
UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN



Building 2 – July Submittal

ARCHITECTURE

UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN



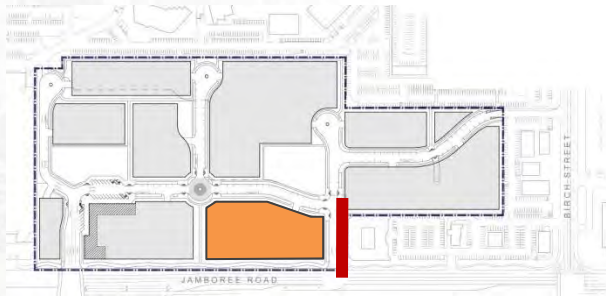
Building 2 – Current Submittal

ARCHITECTURE

UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN

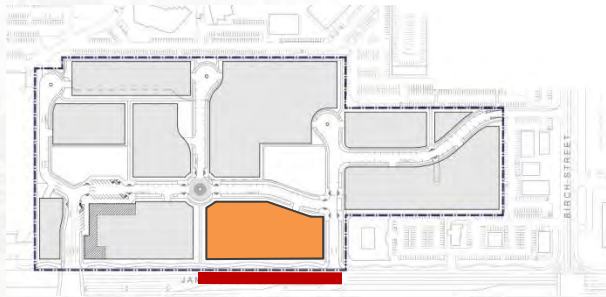


BUILDING 2, ELEVATION E



Building 2 – Enhanced Material Areas

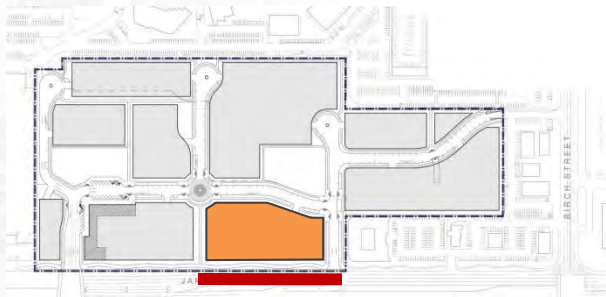
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Building 2 – July Submittal

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UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN



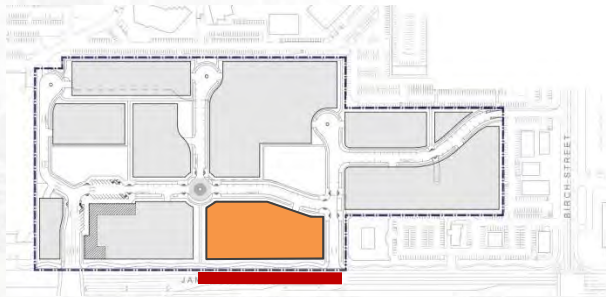
Building 2 – Current Submittal

ARCHITECTURE

UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN



BUILDING 2, ELEVATION F



Building 2 – Enhanced Material Areas

ARCHITECTURE



UPTOWN NEWPORT SITE PLAN

UPTOWN NEWPORT PLANNED COMMUNITY DEVELOPMENT PLAN





NOTES

- 1: COMMUNITY FOCAL POINT WITH ENHANCED BASE AND VARIED WINDOW DETAILING AT DIFFERENT FLOORS
- 2: VARIATION IN STOREFRONTS AND DETAILING AT BASE
- 3: PEDESTRIAN ACCESS TO RETAIL FROM GARAGE
- 4: ONE-STORY STEP DOWN
- 5: RECESSED BALCONIES
- 6: HIGHER CEILING WITH TALLER GLASS
- 7: TRIM AT COLOR CHANGE; BASE/ MIDDLE/TOP PROPORTION
- 8: JULIET BALCONIES
- 9: COMMUNITY FOCAL POINT WITH ENHANCED MATERIALS AND EXPANDED GLASS AT CORNER
- 10: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE STONE, TILE, LIMESTONE PLASTER AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR.

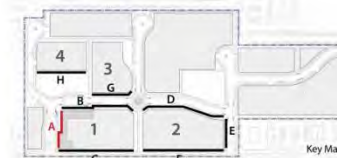


PROTOTYPICAL BUILDING ELEVATIONS

Uptown Newport
Uptown Newport LP

Date: 07-19-2013
Revised: 09-03-2013

Scale: 3/32" = 1'
0' 16' 32'



SHEET

A1

3 OF 28



NOTES

- 1: COMMUNITY FOCAL POINT WITH ENHANCED MATERIALS AND EXPANDED GLASS AT CORNER
- 2: CORNER RETAIL
- 3: MINOR MASSING BREAK
- 4: MAJOR MASSING BREAK
- 5: BALCONY
- 6: CANOPY
- 7: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE STONE, TILE, LIMESTONE PLASTER AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR.
- 8: ENHANCED MATERIALS/ FINISHES SHALL INCLUDE STONE, TILE, LIMESTONE PLASTER AND OTHER ENHANCED MATERIALS APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR.



PROTOTYPICAL BUILDING ELEVATIONS

Uptown Newport
Uptown Newport LP

Date: 07-19-2013
Revised: 09-03-2013

Scale: 3/32" = 1'
0' 16' 32'



SHEET

A3

5 OF 28







CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

September 5, 2013 Meeting

Agenda Item 3

SUBJECT: Lido Villas - (PA2012-146)
3303 and 3355 Via Lido

- General Plan Amendment No. GP2012-005
- Coastal Land Use Plan Amendment No. LC2013-001
- Code Amendment No. CA2012-008
- Site Development Review No. SD2013-001
- Tract Map No. NT2013-001
(Tentative Tract Map No.17555)
- Mitigated Negative Declaration No. ND2013-001

APPLICANT: Dart Development Group

PLANNER: Makana Nova, Assistant Planner
(949) 644-3249, mnova@newportbeachca.gov

PROJECT SUMMARY

The project consists of the demolition of a 3-story commercial building, a single-story church building (First Church of Christ, Scientist), and a 56-space surface parking lot to accommodate the development of 23 townhouse-style multi-family dwelling units on a 1.2 acre site. The following applications are requested in order to implement the project as proposed:

1. **General Plan Amendment**-to change the land use of a portion of the project site (3303 Via Lido) from PI (Private Institutions, 0.75) to RM (Multi-Unit Residential, 20 DU/acre).
2. **Coastal Land Use Plan Amendment**-to change the land use of a portion of the project site (3303 Via Lido) from PI-B (Private Institutions) to RM-D (Multiple-Unit Residential).
3. **Zoning Code Amendment**-to change the Zoning designations of the properties at 3303 Via Lido from PI (Private Institutions) and 3355 Via Lido from RM (Multiple-Unit Residential, 2178) and establish a Planned Community Development Plan (PC) Zoning District over the entire project site with development standards for a new 23-unit multi-family project. In order to establish the proposed planned community development plan, a waiver of the minimum site area of 10 acres of developed land is necessary.
4. **Site Development Review**-to allow the construction of 23 townhouse-style multi-family dwelling units.
5. **Tract Map**-to combine six underlying parcels on two existing properties and establish a 23-unit residential condominium tract on a 1.2 acre site.
6. **Mitigated Negative Declaration**-to evaluate environmental impacts relative to the California Environmental Quality Act (CEQA).

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ (Attachment No. PC 1) and attached Exhibits recommending the City Council:
 - Adopt Mitigated Negative Declaration No. ND2013-001;
 - Approve General Plan Amendment No. GP2012-005;
 - Approve Local Coastal Plan Amendment No. LC2013-001;
 - Approve Code Amendment No. CA2012-008;
 - Approve Site Development Review No. SR2013-001; and
 - Approve Tract Map No. NT2013-001
(Tentative Tract Map No. 17555).

DISCUSSION

August 22, 2013, Planning Commission Meeting

The Planning Commission received a Staff presentation of the proposed project on August 22, 2013, and voted to continue the project to September 5, 2013, to allow additional time for the Planning Commission to consider the project and provide direction for Staff. The Planning Commission requested additional information related to the architectural design and construction of the project. The draft Planning Commission minutes are included as Attachment No. PC 3. Public comment letters received prior to the meeting are included as Attachment No. PC 4.

Generally, the Planning Commission requested the following information:

- Additional details regarding the architectural style and material finishes.
- Greater discussion of the project's compatibility the Lido Village Design Guidelines.
- Analysis and comparison of hardscape and landscape area within common areas on-site.
- Consideration of additional guest parking beyond the minimum required 12 spaces within the surface parking areas.
- Revisions to the Planned Community Development Text to better address permitted land uses, parking requirements, and the architectural design of the project.
- Conditions of approval to incorporate requirements for City review of the covenants, conditions, and restrictions (CCRs) for the project.
- Discussion of the comments submitted by the Friends of Dolores and written by Robert Hawkins on August 22, 2013, relative to the CEQA analysis of the project and Lido Village Design Guidelines.

The following analysis responds to the Commission's concerns and includes additional information that was not available at the August 22, 2013, meeting.

Analysis

Project Design

As previously discussed in the August 22, 2013 staff report, the project is designed in a coastal modern architectural style. To better illustrate the architectural design of the proposed project, a photo of the materials board and detailed architectural elevations (Attachment No. PC 5 and 6).

Finishes include the use of horizontal stained cedar siding on the Island Unit type that encompasses vertical panels at the front elevations of each dwelling unit in areas that are not occupied by windows. Adjacent guardrails would provide a wood handrail to complement the wood panels.

The same wood cedar siding would be utilized on the Harbor Unit type in a similar treatment to the interior panel treatments facing the residential balconies. These units would be defined by a white stripe patterned glazing on the tempered glass guardrails at each level.

The side of each façade would incorporate concrete composite panel elements at the side facades with cream or grey panels, depending on the unit type. Aluminum finishes would serve to define window panel areas at the front elevations for both unit types. The building materials maintain a cool neutral color palette accented by warm wood elements applied to all units to maintain continuity throughout the project site.

Lido Village Design Guidelines

The City Council adopted the Lido Village Design Guidelines (Guidelines) on January 10, 2011 to provide guidance and inspiration for area-wide improvements. With the City Council's adoption of the Guidelines by resolution, the Guidelines do not have the weight of an ordinance.

The following provides a summary of the content provided within the Guidelines:

- **Chapter 1** is an introduction that provides the summary and objectives of the Lido Village Design Guidelines:

"The objective of the Guidelines is to provide owners with strong positive images and a design vocabulary for the renewal of Lido Village. These Guidelines are intended to streamline the design and approval process by requiring property owners to adhere to the contents within. Special considerations or incentives may be provided for

projects that provide enhanced amenities or public benefit, at the discretion of City officials.”

- **Chapter 2** identifies geographic areas within Lido Village along with edge conditions (Street-focused, Buffer edge, Waterfront edge, and Service edge) for the design areas with guidelines for improved pedestrian connections and open space.
- **Chapter 3** provides architectural guidelines (form/massing, facade treatments, street interface, roofs, and building materials) and identifies “Coastal” and “Mediterranean” architectural styles as being preferred.
- **Chapter 4** provides landscape guidelines that apply to plantings and hardscape improvements. Significant attention is paid to streets, the waterfront, pedestrian connections, and links to surrounding neighborhoods to guide the design of future capital improvement projects and beautification efforts (budget permitting). A strong preference is identified for “California Friendly” plantings that have low watering requirements compatible with the climate, soils, and setting.
- **Chapter 5** addresses implementation of the Guidelines as a design manual for private development and public spaces. Within this framework, flexibility will be preserved while establishing a clear statement of design intent that property owners, designers, and decision-makers will need to follow.

Consistency with Lido Village Design Guidelines

Chapter 2 of the Guidelines suggests a “Street-focused” edge along Via Lido and Via Malaga and a “Service” edge along Via Oporto. The Street-focused edge suggests image-defining facades with street orientation, strong building/pedestrian interfaces, and the use of a unifying theme and character. The Service edge suggests back of house and service conditions, limited pedestrian access, and special screening applications. Additionally, the Guidelines suggest a Primary Pedestrian Corridor along Via Lido and Secondary Pedestrian Corridors along Via Malaga and Via Oporto. The project provides a consistent street-focused edge for all three street frontages. Vehicular access is not provided along Via Lido accentuating pedestrian access. Although the street focused edge along Via Oporto doesn’t provide elements of a service edge as identified in the Guidelines, the design supports future use of Via Oporto as a pedestrian corridor. Via Oporto was identified as a Service edge due to its proximity with Via Lido Plaza and with the change of use from Pavilions to West Marine, there should be a diminishment of service activities potentially facilitating enhanced pedestrian use consistent with the street’s designation as a secondary pedestrian corridor.

Staff believes the project is consistent with the architectural guidelines identified in Chapter 3 of the Guidelines. The architectural style is a modern interpretation of a Coastal style. The project incorporates simple block massing characteristic of this style accented by a wood panel siding treatment along the front façades. Building materials have been chosen to withstand coastal conditions and the cedar is considered a durable wood that is permitted for exterior treatments without preservative treatments.

While the architecture does not exhibit all of the “coastal” elements identified by the Guidelines, the overall result suggests a nautical flavor with its forms and choice of high quality materials.

The project incorporates a combination of hardscape and landscape as depicted on the proposed landscape plan that is water-efficient, drought tolerant and therefore consistent with the landscape guidelines identified in Chapter 4 of the Guidelines.

Overall, Staff believes the project’s strong consistency with the site and neighborhood planning aspects of the Guidelines, coupled with the applicant’s modern interpretation of Coastal architecture with the use of authentic, high quality materials warrants a recommendation to find the project consistent with the Lido Village Design Guidelines. Ultimately, the project, if approved, should help to achieve the overall vision to create a vibrant gateway Village in the heart of historic Newport Beach’s Balboa Peninsula by creating a unique coastal California destination.

Hardscape vs. Landscape Open Space Areas

The landscaping should provide adequate buffering and softening of the urban design aesthetic. The site plan proposes 8,526 sq ft of landscape area for the project site. A total of 22,389 sq ft of hardscape areas are provided on-site, including required vehicle circulation areas. A calculation of these hardscape and landscape areas is provided as Attachment No. PC 7.

Of the total 5,474 sq. ft. of common areas not utilized for vehicle circulation, 71 percent are provided as landscape areas. A total of 2,483 sq. ft. of common areas qualify toward the calculation of common open space and provide the required 15-foot dimension as useable common open space.

Guest Parking and Vehicle Circulation

Twelve guest parking spaces (0.5 spaces per dwelling unit) are required under the proposed Planned Community Development Plan, consistent with the standard for the RM Zoning District of the Zoning Code.

The Planning Commission expressed concern that the 12 guest spaces provided would not be sufficient to meet demand for the project and mentioned requiring more than the minimum requirement.

Staff, including the Public Works Department, has worked extensively with the applicant to achieve a site design that provides the maximum number of guest parking spaces on-site with adequate vehicle circulation and access for each of these spaces. Staff believes it would be difficult for the applicant to provide additional guest parking on-site that would provide adequate circulation and access to sufficiently serve the project site.

Draft Conditions of Approval

The following changes have been reflected and redlined in Exhibit “F” of the revised draft resolution (Attachment No. PC 1) to address the Planning Commission’s comments:

- Draft Condition No. 2 has been amended to specify “selling broker” in the list of notifications of the conditions of approval since the project will consist of condominium dwelling units available for individual sale rather than “leasing agent” as originally identified.
- Condition No. 47 was clarified to specify that park fees are assessed on a per unit basis.
- A typographical error was corrected in Condition No. 72 to accurately reflect the word, “relocation.”
- Condition No. 85 has been added to reflect requirements for school fees.
- Condition No. 86 has been added requiring City review of the covenants, conditions, and restrictions for the development.

PC-Text

Revisions and additions have been made to the draft Planned Community Development Plan (Attachment No. PC 2) to reflect the comments of the Planning Commission. Language has been added to address the architectural character of the project, clarify permitted land uses, and address the use of the garage areas for the parking of vehicles.

Robert Hawkin’s Comment Letter

A comment letter was submitted by the Friends of Dolores and written by Robert Hawkins on Thursday, August 22, 2013 (Attachment No. PC 4). The commenter indicates that the project MND is inadequate as it does not provide a cumulative analysis specifically referencing the City Hall Reuse Project.

The City Hall Reuse Project Amendments appeared on the City Council’s agenda for consideration in March of 2013, and they were continued to consider several proposals for development of the site. Subsequent to selecting RD Olson to negotiate development of the site with a hotel in July of 2013, the City decided to prepare an Environmental Impact Report (EIR) for both the proposed hotel as well as the pending land use plan amendments. With the decision to prepare an EIR for the redevelopment of the former City Hall site, the City Council will not consider the proposed GPA for the former City Hall site until after it considers the Lido Villas GPA. The MND was prepared considering the draft MND for the proposed land use amendments for the former City Hall site and an additional discussion of this analysis is provided by the CEQA consultant as Attachment No. PC 8.

The commenter indicates that the MND does not contain an analysis of Charter Section 423 and that the Charter 423 analysis provided in the Staff Report does not account for the City Hall Reuse Project. The Charter 423 analysis was not included in the MND since the provisions of Charter Section 423 are procedural in nature (i.e. how a General Plan Amendment (GPA) may be authorized) and not adopted for the purpose of protect the environment. The Staff Report included an analysis as mandated by Charter Section 423. The City Hall Reuse Project was not included in that analysis because it was not approved by the City Council and Charter Section 423 does not require an analysis of pending General Plan Amendments. Should the City Council approve the proposed Lido Villas GPA, the increase in units will affect future GPA within Statistical Area B5 including the pending GPA for the former City Hall site.

The commenter indicates that the MND characterizes the Lido Village Design Guidelines as regulatory when they are not. This characterization in the Draft IS/MND is unintentional and the IS/MND discusses the Lido Village Design Guidelines to provide land use context to the potential development. If the project were not consistent with the guidelines, potential land use and aesthetic impacts could occur. Therefore, consistency with the Guidelines, in addition to the long-range goals and policies articulated in the Newport Beach General Plan and Coastal Land Use Plan support land use compatibility and the conclusion that potential impacts would be less than significant.

Summary

Staff recommends that the Planning Commission recommend adoption of the MND and approval of the project applications.

Overall, the proposed project would result in the redevelopment of an under-utilized and aging commercial lot with a compatible residential development that implements the goals and policies for Lido Village. The project would also result in the redevelopment of a property that was specifically re-designated for residential use as part of the 2006 General Plan Update to encourage its redevelopment.

Public Notice

This item was continued from to a date certain in the Planning Commission minutes from August 22, 2013. Notice for the August 22, 2013, hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property, and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Alternatives

Staff believes that the findings for approval can be made for the proposed project as recommended and the facts in support of the required findings are presented in the draft

resolution (Attachment No. PC 1). The following alternatives are available to the Planning Commission:


1. The Planning Commission may suggest specific changes that are necessary to alleviate any concerns such as the project height, resulting in abrupt changes in scale, or architectural consistency with the Lido Village Design Guidelines. If any additional requested changes are substantial, the item could be continued to a future meeting. Should the Planning Commission choose to do so, staff will return once the applicant has had an opportunity to revise the project accordingly with a revised resolution incorporating new findings and/or conditions.
2. If the Planning Commission believes that there are insufficient facts to support the land use amendments, the Planning Commission may deny the application without prejudice in the draft resolution for denial. The applicant may then return with a project that incorporates only the property at 3355 Via Lido, which is already designated for multi-family residential use.

Prepared by:



Makana Nova
Assistant Planner

Submitted by:



Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Revised Draft Resolution
- PC 2 Revised Draft Planned Community Development Plan
- PC 3 Draft Planning Commission Minutes
- PC 4 Public Comment Letters
- PC 5 Materials Board
- PC 6 Detailed Elevations
- PC 7 Calculation of Hardscape and Landscape Areas
- PC 8 Discussion of MND Cumulative Analysis Including the City Hall Site

Attachment No. PC 1

Revised Draft Resolution

RESOLUTION NO. #####

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING CITY COUNCIL ADOPTION OF MITIGATED NEGATIVE DECLARATION NO. ND2013-001, APPROVAL OF GENERAL PLAN AMENDMENT NO. GP2012-005, COASTAL LAND USE PLAN AMENDMENT NO. LC2013-001, ZONING CODE AMENDMENT NO. CA2012-008, SITE DEVELOPMENT REVIEW NO. SD2013-001, AND TENTATIVE TRACT MAP NO. NT2013-001 FOR PROPERTIES LOCATED AT 3303 AND 3355 VIA LIDO (PA2012-146)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by DART Development Group, with respect to property located at 3303 and 3355 Via Lido, and legally described as Lots 1201 to 1204 together with that portion of the adjoining alley of Tract 907, as shown on map recorded in Book 28, Pages 25 to 36, inclusive, of Miscellaneous Maps, records of Orange County, California, together with that portion of Lots 4 and 5 of Tract 1117, in the city of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 35, Page 48 of Miscellaneous Maps, records of Orange County, California, together with a portion of the 20 foot alley adjoining said Lots 4 and 5 as abandoned by resolution of the City Council of Newport Beach on February 4, 1946, a certified copy of said resolution being recorded March 11, 1946 in Book 1400, Page 149 of Official Records, requesting approval of a General Plan amendment, Coastal Land Use Plan amendment, Zoning Code amendment, site development review, and tentative tract map.
2. The proposed project consists of the demolition of a 3-story commercial building, a single-story church building (First Church of Christ, Scientist), and a 56-space surface parking lot to accommodate the development of 23 townhouse-style multi-family condominium units on a combined 1.2 acre site.
3. The General Plan Land Use Element category of the subject property at 3303 Via Lido is Private Institutions (PI, 0.75 FAR). The General Plan Land Use Element category of the subject property at 3355 Via Lido is Multiple-Unit Residential (RM, 20 du/ac).
4. The requested change of the General Plan designation of 3303 Via Lido is from Private Institutions (PI, 0.75 FAR) to Multiple-Unit Residential (RM, 20 du/ac) (General Plan Amendment No. GP2012-005).

5. Council Policy A-18 requires that proposed General Plan amendments be reviewed to determine if a vote of the electorate would be required pursuant to Section 423 of the City Charter. If a General Plan Amendment (separately or cumulatively with other GPA's within the previous 10 years) generates more than 100 peak hour trips (AM or PM), adds 40,000 square feet of non-residential floor area, or adds more than 100 dwelling units in a statistical area, a vote of the electorate would be required if the City Council approves the GPA.
6. This is the fourth General Plan Amendment that affects Statistical Area B5 since the General Plan update in 2006. The amendment results in seven additional dwelling units and there is no change in square-footage of non-residential floor area. The seven additional units result in an overall decrease in a.m. and p.m. peak hour trips based on the residential/condominium townhouse trip rates provided in Council Policy A-18. Including 80 percent of prior General Plan amendments results in a total increase of 16,275 square feet of nonresidential floor area, 49 a.m. peak hour trips, 65 p.m. peak hour trips, and nine residential dwelling units for Statistical Area B5. As none of the thresholds specified by Charter Section 423 are exceeded, no vote of the electorate is required if the City Council chooses to approve General Plan Amendment No. GP2012-005.
7. The subject property is located within the coastal zone. The Coastal Land Use Plan category of 3303 Via Lido is Private Institutions (PI-B) and the Coastal Land Use Plan category of 3355 Via Lido is Multiple-Unit Residential (RM-D).
8. The requested change to the Coastal Land Use category is consistent with the recommended General Plan Amendment for 3303 Via Lido from Private Institutions (PI-B) to Multiple-Unit Residential (RM-D). The CLUP amendment (LC2013-001) will not become effective until the amendment to the Coastal Land Use Plan is approved by the Coastal Commission.
9. The Zoning designation of 3303 Via Lido is Private Institutions (PI, 0.75 FAR) and the Zoning designation of 3355 Via Lido is Multi-Unit Residential (RM, 2178).
10. The requested change of the Zoning District designations for both portions of the project site are to the PC-Planned Community Zoning District (Zoning Code Amendment No. CA2012-008). The application includes the adoption of the Lido Villas Planned Community that will provide land use and development standards for the construction and operation of a 23-unit condominium development. A waiver of the 10 acre (developed) minimum site area is requested as part of the establishment of the PC Zoning District. The resulting density under the PC Zoning District would be equivalent to the density allowed under the RM 2178 designation and would allow for a maximum of 23 dwelling units on-site (20 dwelling units per acre).

11. A public hearing was held on August 22, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

11.12. A public hearing was held on September 5, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. An Initial Study and Mitigated Negative Declaration have been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The draft Mitigated Negative Declaration was circulated for a 30-day comment period beginning on July 12, 2013, and ending on August 13, 2013. The environmental document and comments on the document were considered by the Planning Commission in its review of the proposed project.
3. The Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are attached as Exhibits "A" and "B", respectively. The documents and all material, which constitute the record upon which this decision was based, are on file with the Planning Division, City Hall, 100 Civic Center Drive, Newport Beach, California.
4. On the basis of the entire environmental review record, the proposed project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse affects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified and incorporated in the Mitigation Monitoring and Reporting Program are feasible and will reduce the potential environmental impacts to a less than significant level.

SECTION 3. REQUIRED FINDINGS.

1. Amendments to the General Plan, Coastal Land Use Plan, and Zoning Code are legislative acts and neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments. However, amendments of the Coastal Land Use Plan must be found consistent with the Coastal Act to be certified by the California Coastal Commission.

2. The requested GPA and resulting land use change is compatible with the existing surrounding uses and planned land uses identified by the General Plan because the project would introduce residential land uses on a property that abuts 3355 Via Lido, which is already designated for residential land use. Additionally, the proposed amendment from PI to RM will be compatible with adjacent residential properties to the east, religious institutional use to the south, and commercial uses to the west. 3355 Via Lido is an unusually shaped parcel and the proposed amendment will create a larger shaped parcel making development more efficient. The Lido Village Subarea has been characterized by underperforming retail uses within the past decade and additional residential units would support commercial properties within the area.
3. The requested GPA from PI to RM does not eliminate existing or future land uses to the overall detriment of the community given the site's small size, location, and surrounding uses. The site is developed with buildings designed for a religious institution and the site does not provide adequate parking and is reliant upon off-site and public street parking. Maintaining the site's PI land use designation would maintain the existing religious institutional use, which is not considered a traditional visitor-serving use, and maintain the inadequate parking arrangement. The existing buildings would require extensive alterations to accommodate other potential visitor-serving uses or other institutional uses under the existing PI land use designation.
4. The requested GPA and resulting land use change is consistent with other applicable land use policies of the General Plan. Consistent with General Plan Policy 6.9.1 (Priority Uses) for Lido Village, the project site is located in an area of Lido Village where multi-family uses are planned and encouraged. The size, density and character of the proposed dwelling units complement the existing land uses in the project area and include design elements consistent with Land Use Element Policy 5.1.9 (Character and Quality of Multi-Family Residential) that require multi-family dwellings to be designed to convey a high quality architectural character. Consistent with General Plan Policy LU 6.2.1 (Residential Supply), the provision of 23 townhomes on the site would help the City meet its regional housing needs.
5. The requested CLUP amendment is necessary to maintain consistency with the recommended GPA. The CLUP amendment is consistent with other applicable policies of the CLUP related to land use, public access, and resource protection. The project would not limit the potential to place coastal-development and coastal-related land uses within Lido Village given the site's location and existing adjacent and planned uses. The site is separated from Newport Bay by Via Lido and private development and the majority of the site is designated for residential use. The site is also separated from nearby commercial uses by public roadways with the exception of the small commercial property to the north of the project site. The site does not provide public access to the coast and development will reduce demand for public parking with the elimination of the existing religious

institutional use that does not provide off-street parking. The proposed Planned Community (PC) Zoning would apply appropriate site and project specific setbacks and height limits to the project site given the site's urban location and all required parking is provided on-site. The site is fully developed and does not support any natural resources and all potential environmental impacts associated with the project are appropriately addressed through standard building permit procedures and the mitigation measures identified in the Mitigated Negative Declaration.

6. The requested Zoning Code Amendment to establish a Planned Community Development Plan will provide appropriate land use regulations and development standards ensuring that the project will meet the goals, objectives, and policies of the General Plan, CLUP, and purpose of the PC district. Despite the requirement that PC's be 10 acres to take advantage of larger-scale comprehensive planning, the 1.2-acre Lido Villas Planned Community provides for a coordinated and comprehensive project establishing an urban standard more consistent with the project's location within the larger commercial and mixed-use Lido Village area. The Multiple-Unit Residential (RM) development standards reflect a suburban standard and establishing urban standards through a Planned Community are necessary in order to better integrate the proposed project with the surrounding area. Larger scale, comprehensive planning for Lido Village has been accomplished through the recently approved Lido Village Design Guidelines, and thus, a waiver of the 10 acre area requirement for the establishment of a Planned Community is appropriate for the proposed project under these circumstances.
7. The future development of the property affected by the proposed amendments will be consistent with the goals and policies of the Land Use Element of the General Plan and the Coastal Land Use Plan; and will be consistent with the purpose and intent of the proposed Lido Villas Planned Community (PC) Zoning District of the Newport Beach Municipal Code.

Site Development Review

A site development review is required for the construction of five or more residential units processed in conjunction with a tentative tract map. The site development review analyzes the project as a whole for compatibility with the site and surrounding land uses. In accordance with Section 20.52.080 (Site Development Review) of the Zoning Code, the following findings and facts in support of a site development review are set forth:

Finding:

- A. *Allowed within the subject Zoning district;*

Facts in Support of Finding:

- A-1. The proposed Site Development Review for a 23-unit condominium project is consistent with the proposed Lido Villas Planned Community that would allow 23 residential units.

Finding:

B. In compliance with all of the applicable criteria [below]:

- a. Compliance with this Section, the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;*
- b. The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent development; and whether the relationship is based on standards of good design;*
- c. The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;*
- d. The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;*
- e. The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and*
- f. The protection of significant views from public right(s)-of-way and compliance with Section 20.30.100 (Public View Protections); and*

Facts in Support of Finding:

- B-1. Refer to facts 1 through 7 under *Required Findings*, above that discuss the project's consistency with the proposed Multiple-Unit Residential (RM) General Plan land use designation, RM-D Coastal Land Use Plan category, and the Lido Village Planned Community (PC) Zoning District.
- B-2. The project has been designed as 23, 3-story units within five building structures and provides for effective private open space, light, and air for each unit. The project is integrated as a unified development through the use of similar architectural style and design elements, shared use of parking, and internal pedestrian circulation.
- B-3. Access to the site, on-site circulation, and parking areas are designed to provide standard-sized parking spaces, 26-foot-wide, two-way driveways, and the minimum vehicle turning radius to accommodate and provide safe access for residents and guests (including the disabled), emergency vehicles, delivery trucks, and refuse collections vehicles, as determined by the City Traffic Engineer.

- B-4. The front setbacks along each street frontage are appropriate to support pedestrian connectivity within Lido Village and each dwelling unit provides separate and well-defined entries.
- B-5. Mechanical equipment for the residential units have been located within enclosures at the roof deck level to reduce noise impacts and the enclosures will provide effective screening below the roof deck parapet level to minimize aesthetic impacts.
- B-6. The project has been designed to avoid conflicts among uses, such as noise, vibration, lighting, odors, and similar impacts. A 6-foot block wall provides a buffer between the proposed residential units and the existing commercial units to the north of the project site and is designed to maintain privacy and protection for the residential tenants.
- B-7. The height, bulk, and scale of the residential units are comparable to the existing 35-foot-high commercial building on-site at 3355 Via Lido. Each dwelling unit is designed to provide variation and modulation between building units and along the rooflines for visual interest. The front façades include both vertical and horizontal off-sets and utilize a variation of building materials to provide enhanced visual relief. The massing of the project is broken up into five separate buildings, which vary in size and placement throughout the project site breaking up building massing.
- B-8. The proposed project is consistent with the Lido Village Design Guidelines. The proposed project combines coastal and modern architectural styles into the residential project in a way that is conscious of coastal living lifestyles and provides a modern loft style reminiscent of the historic coastal warehouses found in adjacent Cannery Village. The residential units provide separate and well-defined entries. All residential units are oriented toward adjacent streets to maximize the pedestrian relationship of the development to the surrounding Lido Village area. The greater setback of the lower level affords a covered porch and the reduced setback at the second level creates a greater interface with the adjacent rights-of-way to ensure compatibility with the pedestrian environment.
- B-9. The proposed units are appropriate in relationship to existing and adjacent development in the area. The unified design theme of the residential units provides for an architectural pattern with the mixed-use structure at 3388 Via Lido to the northeast and historic coastal warehouses located further to the south in Cannery Village.
- B-10. The units are oriented toward the adjacent right-of-way to support pedestrian connections in the Lido Village Subarea. Walkways and egress are sufficient throughout the site as reviewed by the Building Division and the City Traffic Engineer.

- B-11. The project provides 46 residential parking spaces, and 12 residential guest parking spaces, which can be provided entirely on-site. Each residential unit will be afforded a private enclosed two-car garage with direct interior access to their units. All guest parking spaces are provided in the surface parking areas.
- B-12. The project would relocate three on-street parking spaces along Via Malaga, resulting in no net change in the 30 total on-street parking spaces currently provided.
- B-13. The site design provides only two curb cuts with ingress and egress access from Via Oporto and Via Malaga to minimize potential conflicts with use of the streets. The project provides adequate sight distance at each driveway, as determined by the City Traffic Engineer.
- B-14. The parking area complies with the landscape parking lot requirements of NBMC Sec. 20.40.070.D.3 (Development Standards for Parking Areas) and includes adequate and effective use of ground cover, hedges, and shade trees. Landscaping is provided throughout the site in areas that are not utilized by the existing units or areas for parking circulation. All setback areas are landscaped. A variation of ornamental groundcover, vines, shrubs, and trees are utilized to help soften and buffer the massing of the condominium units.
- B-15. New street trees will be provided along all three street frontages adjacent to Via Lido, Via Malaga, and Via Oporto.
- B-16. The project is subject to the City's Water-Efficient Landscape Ordinance (Chapter 14.17 of NBMC) and compliance will be confirmed at plan check prior to issuing building permits.
- B-17. The proposed residential development provides a series of common outdoor living areas that includes open plazas and landscaped seating areas between the residential buildings. Additionally, a water feature is proposed at the corner of Via Lido and Via Malaga. Each unit is afforded a covered porch area and landscaping, private outdoor living space in the form of large balconies, and private roof decks.
- B-18. The site is visible from two key vantage points identified by the General Plan. However, these vantage points are oriented toward water views of Newport Bay. The urban view from these vantage points will not be changed significantly but rather will be improved by replacement of an uninspiring commercial building with a new modern coastal development. The portion of Via Lido, Via Oporto, and Via Malaga, on which the project is located, are not designated as coastal view roads and do not provide coastal views requiring public view protection.

Finding:

- C. *The proposed development is not detrimental to the harmonious and orderly growth of the City, or endanger jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.*

Facts in Support of Finding:

- C-1. The residential project has been designed to ensure that potential conflicts with surrounding land uses are minimized to the extent possible to maintain a healthy environment for both businesses and residents by limiting access points and providing an architecturally pleasing project with articulation and building modulations to enhance the urban environment consistent with the Lido Village Design Guidelines.
- C-2. The proposed surface parking lot has been designed to accommodate and provide safe access for emergency vehicles, delivery trucks, and refuse collections vehicles, as determined by the City Traffic Engineer. The size, design, location, and screening of the refuse enclosures will comply with the requirements of NBMC Sec. 20.30.120 (Solid Waste & Recyclable Materials Storage) ensuring compatibility with the on-site and adjacent uses. Adequate access to individual refuse containers would be provided through each individual unit.
- C-3. Noise and visual impacts with the adjacent commercial property to the north would be minimized due to the 6-foot block wall, and landscaping.
- C-4. The project is subject to the City's Outdoor Lighting requirements contained within Section 20.30.070 of the Zoning Code.
- C-5. Roof-top mechanical equipment for each unit would be fully enclosed within an equipment screen and would not be visible from the right-of-way.
- C-6. The new construction will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Tentative Tract Map

A tentative tract map is requested for residential condominium purposes, to create 23 condominium units. The map would also serve to consolidate six parcels and portions of adjacent vacated alleys into one lot. In accordance with Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Newport Beach Municipal Code, the following findings and facts in support of a tentative tract map are set forth:

Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with the applicable provisions of the Subdivision Map Act and the City Subdivision Code.*

Facts in Support of Finding:

- A-1. Refer to facts 1 through 4 under *Required Findings*, above, that discuss the project's consistency with the proposed Multiple-Unit Residential (RM) General Plan land use designation.
- A-2. The Tentative Tract Map provides for the development of a cohesive planned community with a pattern of building orientations and vehicle circulation that provide a pedestrian-friendly environment with strong connectivity to adjacent commercial and office areas.
- A-3. The Public Works Department has reviewed the proposed tentative map and found it consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act.
- A-4. Conditions of approval have been included to ensure compliance with Title 19.

Finding:

- B. *That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

- B-1. The site is relatively flat and based on the Geotechnical Engineering Services Report prepared by Professional Service Industries, Inc. on August 24, 2012, the site is safe and suitable for development. The site is located within the Orange County coastal plain and underlain by Quaternary alluvial and fluvial sedimentary deposits and the area of the subject site is considered seismically active. Groundwater was measured at approximately 5feet below existing grade on-site. The Geotechnical Report prepared for the project site indicates the near surface soils have a very low expansion potential. The Geotechnical Report identified the following issues that will affect the construction of the development: surface and subsurface disturbance during clearing and demolition, shallow groundwater, potentially liquefiable soils, and soft soil deposits which will require the use of a deep foundation system. A deep foundation system is also recommended to address the presence of soft compressible soils and the shallow water table of the project site. The Geotechnical Report provides additional recommendations for construction of the proposed project to ensure the suitability for the proposed development that will be required for construction.

- B-2. The 1.2 acre site is large enough to accommodate 23 units while providing sufficient landscape setback and open space areas as well as vehicle access and guest parking areas that meet applicable standards. The existing developed site is devoid of natural resources and it is located in an area that provides adequate access to roadways and utilities.
- B-3. The General Plan estimates that future traffic noise exposure will be 60 dB CNEL to the nearest residential facades to Via Lido and identifies that residential uses are clearly compatible or normally compatible with the 60 dB CNEL. With appropriate noise control measures under conventional construction and design of the proposed project (e.g., closed windows, fresh air supply systems or air conditioning), the interior noise levels would comply with the City and State interior noise standard of 45 dB CNEL for residential units.

Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

- C-1. Under existing conditions, the project site and surrounding land areas are fully developed with urban uses and do not contain sensitive biological resources. The vegetation that occurs on-site is ornamental in nature, including trees and ornamental shrubs, groundcover, and vines growing on the existing building's facades and screen walls.
- C-2. No drainages traverse the property and no potential jurisdictional waters or wetlands areas are present on or immediately adjacent to the site.
- C-3. A Mitigated Negative Declaration (MND) was prepared for the proposed project and impacts to biological resources were not identified in the initial study analysis. Thus, mitigation measures for biological resources are not required to ensure the protection of fish, wildlife, or their habitat. On the basis of the entire environmental review record, the proposed Project will have a less than significant impact upon the environment with the incorporation of mitigation measures for air quality, cultural resources, and hazards & hazardous materials. The mitigation measures identified in the MND are feasible and reduce potential environmental impacts to a less than significant level. The mitigation measures would be applied to the Project through the Mitigation, Monitoring and Reporting Program.

Finding:

- D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

- D-1. At full build-out, the residential project will decrease Green House Gas ("GHG") emissions when compared to existing uses, as documented in the MND.
- D-2. Mitigation measures identified in the MND reduce potential impacts associated with air quality, cultural resources, hazards & hazardous materials to a level that is less than significant.
- D-3. No evidence is known to exist that would indicate that the planned subdivision pattern will generate any serious public health problems.
- D-4. All construction for the project will comply with Building, Public Works, and Fire Codes. Public improvements will be required of the developer per Section 19.28.10 of the Municipal Code and Section 66411 of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

- E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

- E-1. Public improvements, consisting of retrofitted curb drains, roadway surfacing along Via Malaga and Via Oporto, and ADA curb ramps along the Via Lido, Via Malaga, and Via Oporto frontages will be required of the applicant per the Municipal Code and the Subdivision Map Act. Each residential unit would be required to provide separate sewer and water connections to a new main within the project site that will connect to an existing main in Via Lido.

- E-2. Existing sewer and utilities easements on-site would be abandoned as part of the tract map. The tract map will establish new emergency access easements and utility easements to accommodate the location of new structures as part of the development. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development.

Finding:

- F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

- F-1. The project site does not contain prime farmland, unique farmland, or farmland of statewide importance and no portion of the Project site is covered by a Williamson Act contract.

Finding:

- G. *That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

- G-1. The project site is not considered a "land project" as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land nor is it located within the boundaries of a specific plan.

Finding:

- H. *That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding:

- H-1. The proposed Tentative Tract Map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Community Development Department enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding:

- I-1. There are no existing dwelling units on the project site. Rather the proposed project includes the construction of 23 new condominium units to contribute to the City's share of the regional housing need, 7 units above what is planned for within the General Plan. The applicant will be responsible for the payment of appropriate fair share, housing in-lieu, and park for the development of these new dwelling units as conditions of approval.

Finding:

- J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

- J-1. A National Pollutant Discharge Elimination System (NPDES) permit is required from the Regional Water Quality Control Board (RWQCB) for the proposed construction activities. A permit is required for all construction activities that include clearing, grading, and/or excavation that disturb at least one acre of total land area. Additionally, a Water Quality Management Plan (WQMP) has been prepared, pursuant to the requirements of the NPDES permit.
- J-2. Compliance with the NPDES permit and the Santa Ana River Basin Water Quality Control Program involves the preparation and implementation of a SWPPP for construction-related activities, which would specify the Best Management Practices (BMP's) that the project would be required to implement during construction activities to ensure that all potential pollutants of concern

(including sediment) are prevented, minimized, and/or otherwise appropriately treated prior to being discharged from the subject property.

- J-3. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.
- J-4. There is adequate sewer system capacity to serve the requirements of the proposed Project. The proposed Project would be able to tie into the existing sewer system without adversely affecting the system, causing any water quality affects, or violating existing requirements prescribed by the Regional Water Quality Control Board. Wastewater from the project will be generated by residential build-out. There will be a reduction in wastewater from the site with the demolition of the existing commercial building and construction of the proposed dwelling units.

Finding:

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

- K-1. The project site is located within the Coastal Zone. The applicant is requesting a Coastal Land Use Plan amendment for the parcel at 3303 Via Lido to accommodate the proposed development. The land use amendment and subsequent coastal development permit (CDP) requests will be reviewed by the California Coastal Commission following City Council approval of the proposed project. . The proposed RM-D land use category does not significantly reduce opportunities for coastal-related, coastal-dependant, or visitor-serving land uses in the Lido Village neighborhood. The project is consistent with the proposed Multiple-Unit Residential (RM-D) Coastal Land Use Plan land use amendment for 3303 Via Lido. Coastal access is not inhibited as the project site is an inland parcel and is not designated for present or future horizontal or lateral coastal access.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

- 1. The Planning Commission hereby recommends that the City Council of the City of Newport Beach adopt Mitigated Negative Declaration No. ND2013-001 as depicted in Exhibit "A" and Mitigation Monitoring Report Program as depicted in Exhibit "B" of this resolution.

2. The Planning Commission hereby recommends that the City Council of the City of Newport Beach approve General Plan Amendment No. GP2012-005 as depicted in Exhibit "C", changing the land use designation of 3303 Via Lido from Private Institutions (PI) to Multiple-Unit Residential (RM, 20 du/ac)
3. The Planning Commission hereby recommends that the City Council of the City of Newport Beach approve Coastal Land Use Plan Amendment No. LC2013-001 as depicted in Exhibit "D", changing the land use designation from Private Institutions (PI-B) to Multiple-Unit Residential (RM-D).
4. The Planning Commission of the City of Newport Beach hereby recommends City Council approval of Zoning Code Amendment No. CA2012-008 as depicted in Exhibit "E", changing the Zoning designation of 3303 Via Lido from PI (Private Institutions) to PC (Planned Community) and changing 3355 Via Lido from RM, 2178 (Multi-Unit Residential) to PC, waiving the 10 acre minimum PC area requirement, and adopting the Lido Villas Planned Community Text as set forth in Exhibit "E".
5. The Planning Commission of the City of Newport Beach hereby recommends City Council approval of Site Development Review No. SR2013-001 and Tentative Tract Map No. NT2013-001, subject to the conditions of approval set forth in Exhibit "F".

PASSED, APPROVED AND ADOPTED THIS 22nd 5th DAY OF AUGUSTSEPTEMBER, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Bradley Hillgren, Chairman

BY: _____
Kory Kramer, Secretary

Exhibit “A”

**Mitigated Negative Declaration
MND SCH No. 2010071050**

(Available separate due to bulk)

<http://www.newportbeachca.gov/index.aspx?page=1347>

Exhibit “B”

Mitigation Monitoring Report Program

DRAFT



6.0 Mitigation Monitoring and Reporting Program

THRESHOLD	MITIGATION MEASURES	RESPONSIBLE PARTY / MONITORING PARTY	IMPLEMENTATION STAGE	LEVEL OF SIGNIFICANCE AFTER MITIGATION
Air Quality				
<u>Threshold 4:</u> During construction of the proposed Project, maximum daily combined emissions for, PM ₁₀ and PM _{2.5} emissions have the potential to exceed the LSTs before application of best management practices and mitigation measures.	MM AQ-I Prior to grading permit issuance, the City shall verify that the following notes are included on the grading plan. Project contractors shall be required to ensure compliance with the notes and permit periodic inspection of the construction site by City of Newport Beach staff to confirm compliance. These notes also shall be specified in bid documents issued to perspective construction contractors. The following notes shall be included on the grading plan and in construction bid documents to implement SCAQMD Rule 403: <ul style="list-style-type: none">• The construction contractor shall ensure that all disturbed unpaved roads and disturbed areas within the Project site are watered at least three (3) times daily during dry weather. Watering, with complete coverage of disturbed areas, shall occur at least three (3) times a day, preferably in the midmorning, afternoon, and after work is done for the day.• The construction contractor shall ensure that all construction vehicles hauling earth materials or demolition debris use covers on any material to prevent the emission of dust during material transport.• Disturbed areas shall be replanted as	Project Applicant, Construction Contractor / City of Newport Beach Building Division	Prior to grading permit issuance, prior to commencement of construction and during construction	Less than Significant



THRESHOLD	MITIGATION MEASURES	RESPONSIBLE PARTY / MONITORING PARTY	IMPLEMENTATION STAGE	LEVEL OF SIGNIFICANCE AFTER MITIGATION
	<p>soon as practical following grading, if such areas will not immediately be paved or covered with buildings.</p> <ul style="list-style-type: none"> The contractor shall ensure that traffic speeds on all unpaved surfaces of the Project site are reduced to 15 miles per hour or less. <p>MM AQ-2 Prior to grading permit issuance, the City shall verify that a note is included on the grading plan requiring a sign be posted on-site that restricts the idling of diesel engines to less than five minutes. The sign shall be installed before construction activities commence and remain in place during the duration of construction activities. Project contractors shall be required to ensure compliance with idling restriction and permit periodic inspection of the construction site by City of Newport Beach staff to confirm compliance. The idling restriction also shall be specified in bid documents issued to prospective construction contractors.</p>	Project Applicant, Construction Contractor / City of Newport Beach Building Division	Prior to grading permit issuance, prior to commencement of construction and during construction	
Cultural Resources				
<u>Threshold 2:</u> Although unlikely, there is a remote possibility that archaeological resources could be encountered during site grading activities.	<p>MM CR-1 Prior to the issuance of grading permits, the City shall verify that the following note is included on the grading plan(s).</p> <p><i>"If suspected archaeological resources are encountered during ground-disturbing construction activities, the construction contractor shall temporarily halt work in a 100-foot radius around the find until a qualified archaeologist can be called to the site to assess the significance of the find,</i></p>	Project Applicant, Construction Contractor and (if required) Project Archaeologist / City of Newport Beach Building Division and Planning Division	Prior to issuance of grading permits and during grading	Less than Significant



THRESHOLD	MITIGATION MEASURES		RESPONSIBLE PARTY / MONITORING PARTY	IMPLEMENTATION STAGE	LEVEL OF SIGNIFICANCE AFTER MITIGATION
	<p><i>and, if necessary, develop appropriate treatment measures in consultation with the City of Newport Beach.”</i></p> <p>The grading contractor shall be responsible for complying with the note. If the archaeologist determines that the find does not meet the CEQA standards of cultural significance, construction shall be permitted to proceed. However, if the archaeologist determines that further information is needed to evaluate significance, the City of Newport Beach shall be notified and a data recovery plan shall be prepared in consultation with the City, which may include the implementation of a Phase II and/or III archaeological investigation per City guidelines. All significant cultural resources recovered shall be documented on California Department of Parks and Recreation Site Forms to be filed with the California Historical Resources Information System South Central Coastal Information Center (CHRIS-SCCIC). The archaeologist shall incorporate analysis and interpretation of any significant find(s) into a final Phase IV report that identifies the level of significance pursuant to Public Resources Code § 21083.2(G). The Project Applicant, in consultation with the archaeologist and the City, shall designate repositories in the event that resources are recovered.</p>				
Threshold 3: Although unlikely,	MM CR-2	Prior to the issuance of grading permits,	Project Applicant,	Prior to issuance of	Less than Significant



THRESHOLD	MITIGATION MEASURES	RESPONSIBLE PARTY / MONITORING PARTY	IMPLEMENTATION STAGE	LEVEL OF SIGNIFICANCE AFTER MITIGATION
there is a remote possibility that paleontological resources could be encountered during site grading activities.	<p>the City shall verify that the following note is included on the grading plan(s).</p> <p><i>“If suspected paleontological resources (fossils) are encountered during ground-disturbing construction activities, the construction contractor shall temporarily halt ground-disturbing activities within 100 feet of the find until a qualified paleontologist can be called to the site to assess the significance of the find, and, if necessary, develop appropriate treatment measures in consultation with the City of Newport Beach.”</i></p> <p>The grading contractor shall be responsible for complying with the note. At the paleontologist’s discretion, the construction contractor may assist in removing rock samples for initial processing. If the paleontologist determines that the find is not unique, construction shall be permitted to proceed. However, if the paleontologist determines that further information is needed to evaluate significance, the City of Newport Beach shall be notified and a treatment plan shall be prepared and implemented in consultation with the City to protect the identified paleontological resource(s) from damage and destruction.</p>	Construction Contractor, and (if required) Project Archaeologist / City of Newport Beach Building Division and Planning Division	grading permits and during grading	
Hazards/Hazardous Materials				
<u>Threshold 1 and 2:</u> The existing buildings on the site that would be demolished as part of the	MM HM-I The City of Newport Beach shall condition all demolition permits to comply with South Coast Air Quality	Project Applicant, Construction Contractor, Asbestos-	Prior to issuance of demolition permits and during	Less than Significant



THRESHOLD		MITIGATION MEASURES	RESPONSIBLE PARTY / MONITORING PARTY	IMPLEMENTATION STAGE	LEVEL OF SIGNIFICANCE AFTER MITIGATION
Project contain friable asbestos materials and materials coated with lead-based paint, both of which have the potential to expose construction workers and/or nearby sensitive receptors to health risks during demolition activities. Asbestos-containing materials and materials containing lead-based paints have the potential to create a significant hazard to the public or the environment.		Management District (SCAQMD) Rule 1403 with respect to asbestos containing materials and the demolition contractor shall be required to comply with Rule 403. All asbestos-related work conducted during the demolition process shall be performed by a licensed Asbestos-abatement Contractor under the supervision of a certified Asbestos Consultant. Asbestos-containing construction materials (ACCMs) shall be removed and disposed of in compliance with notification and asbestos-removal procedures outlined in SCAQMD Rule 1403 to reduce asbestos-related health risks. During demolition, the demolition contractor shall maintain all records of compliance with Rule 1403, including, but not limited to, the following: evidence of notification of SCAQMD pursuant to Rule 1403; contact information for the Asbestos-abatement Contractor and Asbestos Consultant; and receipts (or other evidence) of off-site disposal of all ACCMs. These records shall be made available for City inspection upon request.	abatement Contractor / City of Newport Beach Building Division	demolition	
	MM HM-2	The City of Newport Beach shall condition all demolition permits to comply with Title 17, California Code of Regulations (CCR), Division 1, Chapter 8 (LBP Regulations), which addresses requirements for the removal of components painted with lead-based paint (LBP) during demolition of existing	Project Applicant, Construction Contractor, and Certified Lead Supervisor / City of Newport Beach Building Division	Prior to issuance of demolition permits and during demolition	



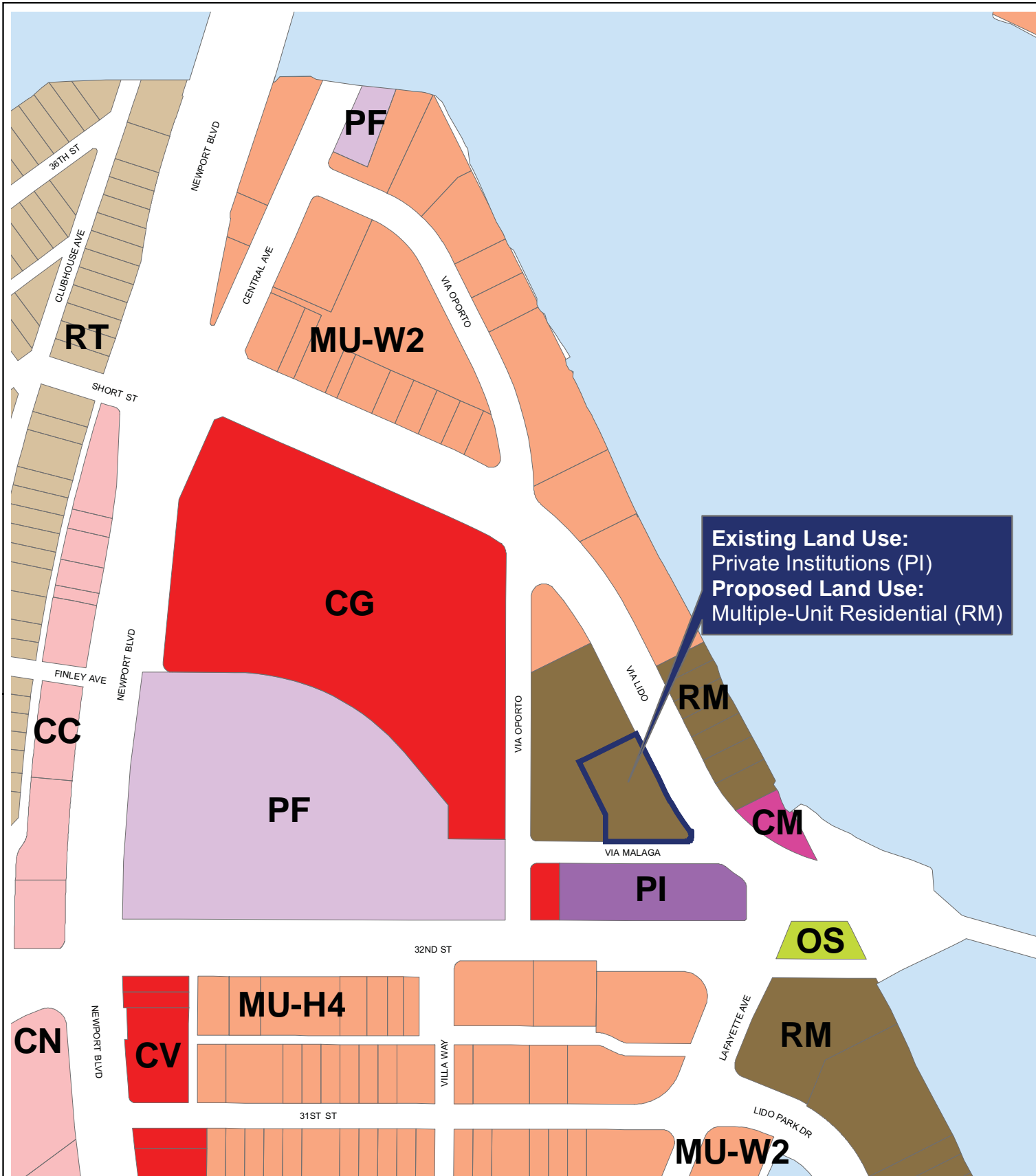
THRESHOLD	MITIGATION MEASURES	RESPONSIBLE PARTY / MONITORING PARTY	IMPLEMENTATION STAGE	LEVEL OF SIGNIFICANCE AFTER MITIGATION
	<p>structures. The demolition contractor shall be required to comply with these provisions. Notification to the California Department of Public Health (CDPH) shall be conducted through completion of an Abatement of Lead Hazards Notification, CDPH Form 8551. The removal of all LBP materials shall be conducted:</p> <ul style="list-style-type: none">• By a Certified Lead Supervisor or Certified Lead Works, as defined by §§ 35008 and 35009 of the LBP Regulations, respectively;• In accordance with the procedures specified in Chapter 12: Abatement, "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," U.S. Department of Housing and Urban Development, June 1995;• Using containment and in a manner which does not result in contamination of non-work areas with lead-contaminated dust, lead-contaminated soil, or lead-based paint debris; and• In accordance with an abatement plan prepared by a certified lead supervisor, certified lead project monitor, or certified lead project designer, which includes all of the requirements as specified in § 36100(4)(A) of the LBP Regulations <p>The Certified Lead Supervisor</p>			



THRESHOLD	MITIGATION MEASURES	RESPONSIBLE PARTY / MONITORING PARTY	IMPLEMENTATION STAGE	LEVEL OF SIGNIFICANCE AFTER MITIGATION
	conducting abatement shall retain records of the notification to the CDPH, and shall retain a copy of the abatement plan on-site at all times during demolition activities. The notification and abatement plan shall be made available to the City upon request for review. All demolition activities shall be subject to inspection by the CDPH and/or City officials to ensure compliance with the requirements of the LBP Regulations and abatement plan. Following completion of all abatement activities, a clearance inspection shall be conducted by a certified lead inspector/assessor or certified lead project monitor in accordance with §§ 36000(a) and 36000(c)(3) of Title 17, CCR, Division I, Chapter 8. A copy of the results of the clearance inspection shall be provided to the City Planning Division upon completion of abatement and inspection activities.			

Exhibit "C"
General Plan Land Use Map
Amendment

DRAFT



GP2012-005 (PA2012-146)
General Plan Amendment
3303 Via Lido

0 125 250 Feet

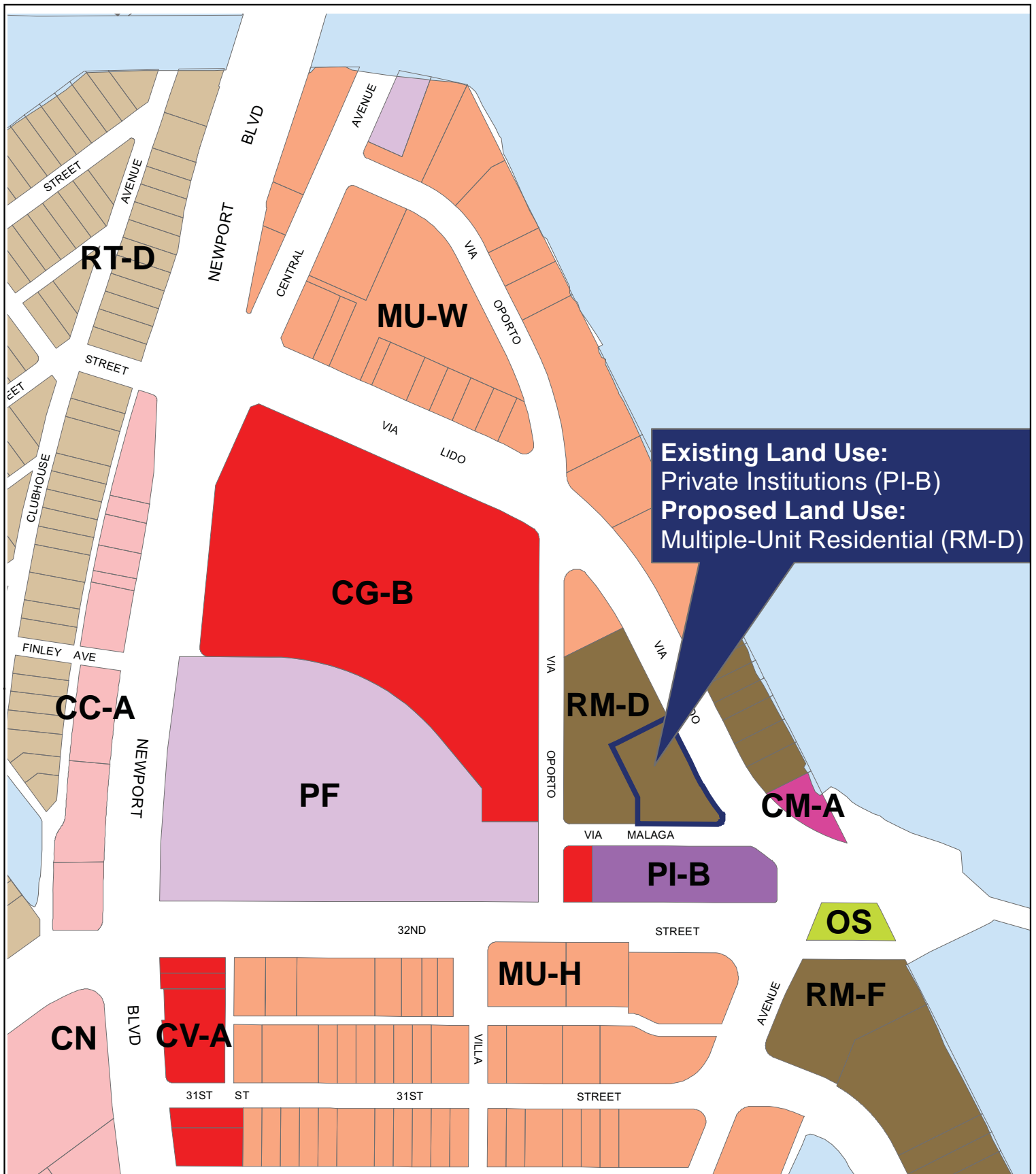


Exhibit “D”

Coastal Plan Land Use Plan

Amendment

DRAFT



LC2013-001 (PA2012-146)
Coastal Land Use Plan Amendment
 3303 Via Lido

0 125 250 Feet



Exhibit “E”
Zoning Map Amendment
And
Lido Villas Planned Community Text

DRAFT



CA2012-008 (PA2012-146)
Zoning Code Amendment
3303 and 3355 Via Lido

0 125 250
Feet



EXHIBIT "F"**CONDITIONS OF APPROVAL****Site Development Review Conditions**

1. The development shall be in substantial conformance with the approved site plan, floor plans, materials board, and building elevations stamped and dated with the date of this approval. (Except as modified by these conditions of approval.)
2. This approval shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the ~~leasing agent~~[selling broker](#).
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
6. Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for the new dwelling units (currently \$2,359.00 per new additional dwelling unit) in accordance with Chapter 15.38 of the Newport Beach Municipal Code. The applicant shall be credited for the reduction in commercial square footage and the remaining balance shall be charged or credited to the applicant.
7. Prior to issuance of building permits, approval from the California Coastal Commission shall be required for the Coastal Land Use Plan Amendment and Coastal Development Permit for the development of 23 residential dwelling units.
8. The applicant shall comply with all project design features, mitigation measures, and standard conditions contained within the approved mitigation monitoring reporting program (MMRP) of MND SCH No. 2010071050 for the project.
9. Development of the project shall comply with the development standards and requirements of the Lido Villas Planned Community Development Plan and be in substantial conformance with the approved Tentative Tract Map No. 174555 dated May 16, 2013.

10. The floor plans and building envelopes for each residential unit are approved as precise plans, unless revisions are approved by the Community Development Director. Future floor area additions to the building envelopes shall be prohibited. The proposed open patio and deck areas for each unit shall not be permitted to be enclosed and the landscape and common open space areas proposed throughout the development site shall be preserved.
11. A total of 46 enclosed garage parking spaces and 12 ground level guest parking spaces shall be provided within the as illustrated on the approved plans.
12. Prior to the issuance of building permits, the project plans shall provide an 8-foot 2-inch minimum clearance below the second story overhangs above the interior drive aisles. Note that Van Accessible height requirements shall be met within the drive aisles. The plans shall identify the width of the drive aisle around the site that is unconstrained (i.e. open to the sky).
13. Prior to the issuance of building permits, documents/plans shall be submitted demonstrating compliance with the requirements of Chapter 14.17 (Water-Efficient Landscaping Ordinance) of the Municipal Code. Plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division and the Municipal Operations Department. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor. Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar permanent barrier. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the Traffic Engineer.
14. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
15. Prior to the final of building permits, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved landscape plan
16. Prior to the issuance of building permits, a National Pollutant Discharge Elimination System (NPDES) permit shall be obtained from the Regional Water Quality Control Board (RWQCB) for the proposed construction activities.

17. Water leaving the project site due to over-irrigation of landscape shall be minimized. If an incident such as this is reported, a representative from the Code and Water Quality Enforcement Division shall visit the location, investigate, inform and notice the responsible party, and, as appropriate, cite the responsible party and/or shut off the irrigation water.
18. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards
19. Prior to the issuance of building permits, the applicant shall prepare a photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are one-foot-candle or less at all property lines. Higher lighting levels are subject to the review and approval of the Community Development Director where it can be shown to be in compliance with the purpose and intent of the Outdoor Lighting section of the Zoning Code.
20. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
21. All mechanical appurtenances (e.g. air conditioning, heating ducts and exhaust vents, swimming pool and spa pumps and filters, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. All rooftop equipment shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Section 10.26.025 (Exterior Noise Standards) of the Newport Beach Municipal Code. Rooftop screening and enclosures shall not exceed 35 feet 4 inches above the existing grade.
22. All trash shall be stored within the buildings for residential uses and screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
23. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

24. Construction activities shall comply with Section 10.28.040 (Construction Activity-Noise Regulations) of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
25. Storage outside of buildings in any parking areas, landscape areas, or setback areas shall be prohibited.
26. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
27. A copy of these conditions of approval shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
28. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
29. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
30. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Lido Villas including, but not limited to, [General Plan Amendment No. GP2013-005](#), [Coastal Land Use Plan Amendment No. LC2013-001](#), [Zoning Code Amendment No. CA2012-008](#), Site Development Review No. SD2013-001, ~~and~~ Tract Map No. NT2013-001, [and Mitigated Negative Declaration No. ND2013-001](#) (PA2013-146). This indemnification shall include, but not be limited to, damages awarded against

the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department Conditions

31. Emergency access will be required for the project which will include the drive aisle which runs through the middle of the project. A site plan must be submitted with the architectural drawings which indicate the proposed emergency access roadway. The roadway should also include locations of existing and proposed fire hydrants, and how the fire lane will be marked, "No Parking Fire lane". Please refer to Newport Beach Guideline C.01 and C.02 for fire lane requirements and approved marking of fire lane.
32. Automatic fire sprinklers shall be required for all new construction. The sprinkler system shall be monitored by a UL certified alarm service company. A sprinkler system NFPA 13R is proposed. Each unit will have its individual riser.
33. Fire Department connections are required to be located within 150 feet of a public hydrant.
34. Smoke detectors are required and are to be located as per the California Building Code.

Building Division Conditions

35. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements.
36. Prior to the issuance of building permits, a minimum of three ADA units shall be provided with one ADA unit for each type of unit.
37. Prior to the issuance of building permits, accessible parking shall be provided within the common parking area.
38. Prior to the issuance of building permits, an accessible route from the public sidewalk, street, public transportation, parking and passenger loading shall be clearly identified, and accessible parking shall be shown on the final approved site plan. Accessible signage shall be clearly noted on the plan check submittal.

39. Prior to the issuance of building permits, a 3-foot landing shall be provided on each side of the upper level door serving the roof deck.
40. Egress from the roof deck shall comply with the applicable code. The floor area of the roof deck shall be included for the purpose of egress analysis.
41. Prior to the issuance of building permits, mechanical units shall comply with sound rating requirements.
42. Spa weight shall be considered in the lateral loading for the building. Where the railing is less than 3 feet from edge of roof deck, the railing shall be 42 inches above the spa edge.
43. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment

Off-Site Impacts

- Encourage car pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top 6-inch surface layer, subject to review/discretion of the geotechnical engineer.

44. Prior to the issuance of grading permits, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for

Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The project applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.

45. Prior to issuance of grading permits, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
46. A list of "good house-keeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.

Tract Map Conditions

47. Prior to recordation of the tract map~~the issuance of building permits~~, Park Fees shall be paid for the 23 new dwelling units (currently \$26,125.00 per unit) in accordance with City Council Resolution No. 2007-30.
48. Prior to ~~the issuance of building permits~~recordation of the tract map, an In-Lieu Housing fee for 23 new dwelling units (currently \$26,359.00 per ~~new additional~~ dwelling unit) shall be paid in accordance with City Council Resolution No. 2010-44.
48. —
49. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAVD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange county Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD standards. Scanned images will not be accepted.**

50. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Section's 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
51. All improvements shall be constructed as required by Ordinance and the Public Works Department.
52. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Via Oporto, Via Malaga, and Via Lido frontages.
53. All existing drainage facilities in the public right-of-way, including the existing curb drains along Via Oporto, Via Malaga, and Via Lido frontage shall be retrofitted to comply with the City's on-site non-storm runoff retention requirements.
54. Via Malaga and Via Oporto are part of the City's Moratorium List. Work performed on said roadways will require additional surfacing requirements. See City Standard 105-L-F.TR.
55. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
56. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanouts shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the public right-of-way or public utilities easement.
57. An encroachment permit is required for all work activities within the public right-of-way.
58. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code 20.30.130. Proposed accent palm landscaping at the corner of Via Malaga and Via Oporto does not meet STD-110-L.
59. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
60. All on-site drainage shall comply with the latest City Water Quality requirements.

61. The new public utilities easement shall be aligned with the corner of the units' overhang to allow water meters to be as close to the unit and out of large vehicular traffic. Each sewer lateral shall have a corresponding sewer cleanout per STD-406-L. Sewer cleanouts and water meters shall be placed along the edge and within the utilities easement.
62. AMR (Automated Meter Reading) water meters shall be installed at owner's cost.
63. Project shall maintain a looped system through the project site. The water line shall connect to the 6-inch main Via Malaga.
64. Service lines shall be a minimum of 10 inches and City does not permit half sized lines.
65. Irrigation and meter fire service, if proposed, shall be protected by a City approved backflow assembly.
66. Lampholes shall be installed at all main line dead ends.
67. All unused sewer laterals shall be capped at property line.
68. All unused water services shall be capped at main (corporation stop).
69. No trees shall be planted within public utilities easement.
70. Water and sewer mains shall have a minimum separation of 10 feet.
71. Water services and sewer laterals shall have a minimum separation of 5 feet.
72. A total of 30 on-street parking spaces shall be maintained around the project site. To maintain the existing number of parking spaces, relocation of the existing fire hydrant on Via Malaga is necessary, as well as, shifting the three parking spaces near the corner of Via Malaga toward Via Lido.
73. The relocation of the project driveway on Via Oporto will require a street light relocation. Install a new street light per City Standard. New street lights shall match the existing street lights in the surrounding area.
74. Remove all non-standard improvements within the public right-of-way (i.e. non-standard sidewalks and brick paving). Reconstruct the improvements per City Standard.
75. Edison vents along Via Malaga shall be relocated as part of the proposed project. One vent is located within the project's proposed driveway.

76. ADA compliant sidewalks are required around the proposed project. In constrained areas (i.e. meter posts, street lights, Edison vents, fire hydrants, proposed planter boxes, curb ramps, etc.), pedestrian easements may be required to accommodate ADA path of travel (4-foot-wide minimum).
77. Any non-standard improvements within the easement areas requires an Encroachment Agreement with the City.
78. Construct a new ADA curb ramp at the corners of Via Malaga/Via Lido and Via Malaga/Via Oporto per City Standard STD-181-L. An easement for sidewalk purposes may be required to accommodate an ADA compliant curb ramp at the Via Malaga/Via Oporto intersection.
79. Tree types and sizes shall be clearly identified on plans.
80. County Sanitation District fees shall be paid prior to the issuance of any building permits.
81. No building permits may be issued until the appeal period has expired, unless otherwise approved by the Planning Division. Building permits for structures located across the existing property lines shall not be issued until the tract map has been recorded.
82. Subsequent to recordation of the Tract Map, the applicant shall apply for a building permit for description change of the subject project development from “duplex” to “condominium.” **The development will not be condominiums until this permit is finalized.** The building permit for the new construction **shall not be finalized until after recordation of the Tract Map.**
83. In compliance with the requirements of Chapter 9.04, Section 901.4.4, of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than 4 inches in height with a one-inch-wide stroke. The Planning Department Plan Check designee shall verify the installation of the approved street number or addresses during the plan check process for the new or remodeled structure.
84. Tentative Tract Map No. 17555 shall expire 24 months from the date of approval pursuant to NBMC Chapter 19.16.010, unless an extension is otherwise granted by the City for the period of time provided for in the Development Agreement pursuant to the provisions of California Government Code Section 66452.6(a).

85. New development within the project site shall be subject to the state-mandated school fees and Santa Ana Unified School District Measure G and C general obligation taxes based upon assessed value of the residential and commercial uses.
86. Prior to Final Map approval, the applicant shall submit draft Covenants Conditions and Restrictions (CC&Rs) that are prepared by an authorized professional for review and approval by the Director of Community Development and City Attorney, which will be recorded concurrently with the Final Map, and which will generally provide for the following:
- a. Creation of a Master Association, and/or Sub-associations, for the purpose of providing for control over and long term maintenance at the expense of the Master Association and/or Sub-associations of the common area improvements. A provision shall be included that internal project circulation areas, sidewalks, paths, drive aisles, common landscape areas and irrigation, community walls and fencing, sewer laterals, water laterals, common utilities not maintained by the utility provider, and drainage facilities are private and shall be maintained by, and at the expense of the Master Association unless otherwise approved by the Director of Public Works.
 - b. A provision that the architecture and exterior building materials of the dwelling units shall maintain a quality, color, and type consistent with the original project approval.
 - c. A provision that residents shall park only operable vehicles within the parking garage that are in active use (i.e. no long term storage of vehicles).
 - d. A provision that all homeowners and residents will be provided, prior to purchase closing or upon signing of rental agreement, the information and requirements for water conservation pursuant to NBMC Chapter 14.16, Water Conservation and Supply Level Regulations.
 - e. A provision that all appropriate written notifications shall be provided to all initial and subsequent buyers, lessees, and renters within the Lido Villas project notifying them that the area is subject to noise from existing land uses, traffic on Via Lido, and construction within the project and surrounding areas, and as a result, residents and occupants of buildings may experience inconvenience, annoyance, or discomfort arising from noise.
 - f. Information to be provided to future residents that uses and structures are subject to the requirements of the approved Lido Villas Planned Community Development Plan.

- g. Provisions that the following recordation of the Final Map, the Association formed for the subdivision shall submit to the Community Development director a list of all current Officers of the Association after each election.
- h. A provision requiring that proposed amendments to the CC&Rs shall be submitted for review to the Community Development Director or designee, and shall be approved by the city Attorney prior to the amendments being valid.
- a.i. A provision that the City is a third-party beneficiary to the CC&R's and has the right, but not the obligation, to enforce any of the provisions of the CC&Rs.

DRAFT

Attachment No. PC 2

Revised Draft Planned Community
Development Plan

LIDO VILLAS

Planned Community Development Plan

Date: May 16, 2013

Adopted _____ Ordinance No. 2013-

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LIST OF EXHIBITS

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Conceptual Site Plan	A

1.0 INTRODUCTION AND PURPOSE

The Lido Villas Planned Community Development Plan (P) is composed of 23 single family residential townhomes, totaling 63,592 square feet. It is located on the site across from the current City Hall building and bounded by Via Lido, Via Oporto and Via Malaga. The vision laid out in the City's Lido Village Concept Plan is that this parcel is to be part of a vibrant gateway village in the heart of the peninsula. The PCDP has been developed in accordance with the Newport Beach General Plan and is consistent with the Local Coastal Land Use Plan.

The purpose of this PCDP is to provide for the classification and development of coordinated, cohesive, comprehensive planning project with 23 single-unit residential townhomes called Lido Villas.

Whenever the regulations contained in the PCDP conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the PCDP shall take precedence. The Newport Beach Municipal Code shall regulate all development within the PCDP when such regulations are not provided within the PCDP Regulations.

2.0 GENERAL CONDITIONS AND REGULATIONS

1. Archaeological/Paleontological Resources

Development of the site is subject to the provisions of City Council Policies K-4 and K-5 regarding archaeological and paleontological resources.

2. Architectural Design

All development shall be designed with high quality architectural standards and shall be compatible with the surrounding uses. The development should be well-designed with coordinated, cohesive architecture and exhibiting a high level of architectural and landscape quality in keeping with the PCDP's prominent location on the Balboa Peninsula. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural style. Architectural treatments for all ancillary facilities shall be provided.

The residential dwelling units shall maintain an architectural theme consistent with a Modern interpretation of Coastal architectural themes, drawing inspiration from yachts in the adjacent Newport Harbor and coastal warehouses found within Lido Village. Buildings shall incorporate a mix of high quality building materials including stained cedar panels, concrete composite panels in cool white or gray colors, and glass guardrails incorporating wooden handrails or a striped glazing pattern.

3. Building Codes

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Newport Beach Municipal Code.

4. Flood Protection

Development of the subject property will be undertaken in accordance with the flood protection policies of the City.

5. Grading and Erosion Control

Grading and erosion control measures shall be carried out in accordance with the provisions of the Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Community Development Department.

6. Gross Floor Area

Gross floor area shall be defined as the total area of a building including the surrounding exterior walls.

7. Height and Grade

The current site design for the proposed project includes 23 townhome units with flat roof and heights that vary between 31 feet 10 inches (top of roof and roof deck), 35'-4" (top of guardrail) and 39' (top of architectural feature and stairwell to the roof), 350 SF of area for the Harbor Unit and 200 SF of area for the Island Unit) measured from existing grade shown on the topographic survey prior to development of the site.

The architectural feature allows for a varied and interesting roofline as well as providing access and privacy to the outdoor living areas on the roof. The height of any structure within the PCDP shall not exceed thirty nine (39) feet, unless otherwise specified. The height of a structure shall be the vertical distance between the highest point of the structure and the grade directly below.

8. Landscaping/Irrigation

Landscaping and irrigation shall be provided in all areas not devoted to structures, parking lots, driveways, walkways, private patios, and common area patios to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of PCDP. Landscaping and irrigation shall consist of a combination of trees, shrubs, groundcover and hardscape improvements. Landscaping shall be prepared in accordance with the Landscaping Standards and Water-Efficient Landscaping Sections of the Newport Beach Municipal Code and installed in accordance with the approved landscape plans prepared by a licensed landscape architect.

8. Fences and Walls

Fences, hedges and walls shall be in accordance with the Newport Beach Municipal Code Property Development Standards. Such elements shall not exceed forty-two (42) inches in height within the front setback. Where a nonresidential zoning district abuts a residential zoning district, a solid masonry wall a minimum of six (6) feet in height shall be required per the Newport Beach Municipal Code Property Development Standards Section 20.30.040.

9. Lighting – Outdoor

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

11. Lighting – Parking & Walkways

All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans. Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining uses/properties and roadways.

Parking lots and walkways accessing buildings shall be illuminated with a minimum of 0.5 foot-candle average on the driving or walking surface. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer.

If the applicant wishes to deviate from this lighting standard, a lighting plan may be prepared by the applicant and submitted to the Community Development Director for review and approval.

12. Parking Areas

Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas of the parking lots shall be kept free of dust, graffiti, and litter. All components of the parking areas including striping, paving, wheel stops, walls, and light standards of the parking lots shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Newport Beach Municipal Code.

13. Sewage Disposal

Sewage disposal service facilities for the PCDP will be provided by the City of Newport Beach and shall be subject to applicable regulations, permits and fees as prescribed by the City.

14. Screening of Mechanical Equipment

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts and exhaust vents, swimming pool and spa pumps and filters, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment (other than vents, wind turbines, etc.) shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Exterior Noise Standards Section of the Newport Beach Municipal Code. Rooftop screening and enclosures shall be a maximum of 35'-4" feet above finished grade in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCDP.

15. Temporary Structures and Uses

Temporary structures and uses, including modular buildings for construction-related activities are permitted.

16. Trash Container Storage for Residential Dwellings

Trash container storage shall be located within each individual dwelling unit in a designated storage area. Trash collection will occur along the interior driveway of the Lido Villas property and will be provided by the City of Newport Beach. Each unit will place their trash along the edge of the interior driveway for collection.

17. Water Service

Water service to the PCDP will be provided by the City of Newport Beach and will be subject to applicable regulations, permits and fees as prescribed by the City.

3.0 LAND USE AND DEVELOPMENT REGULATIONS

3.1. LIDO VILLAS

Refer to Exhibit A - Conceptual Site Plan for the general location and placement of the townhomes.

1. Number of Units

The maximum allowable number of single-family residential units shall be twenty three (23) at a density of 20 dwelling units/ gross acre.

2. Permitted Uses

- a. Condominiums
- b. Recreation facilities ancillary to residential uses
- c. ~~Parking lots~~Accessory structures and uses
- d. Short-term lodging
- e. Adult day care, small (6 or fewer)
- f. Child day care, small (8 or fewer)
- g. Animal keeping per Section 20.48.040 (Animal-Keeping) of the Zoning Code
- e.h. Personal property sales per Section 20.48.150 (Outdoor Storage, Display, and Activities) of the Zoning Code

Conditionally Permitted Uses

- a. Large Adult Day Care-7 to 14 per Section 20.48.070 (Day Care Facilities-Adult and Child) with a Minor Use Permit
- b. Large Child Care-9 to 14 per Section 20.48.070 (Day Care Facilities-Adult and Child) with a Minor Use Permit
- c. Parking Facility
- d. Utilities, major (CUP)

Conditionally Permitted Uses (Hearing Officer)

- a. Day Care, General

Prohibited Uses

Land uses that are not listed above are not allowed, except as provided by Chapter 20.12 (Interpretation of Zoning Code Provisions) of the Zoning Code.

Temporary Uses

Temporary uses may be allowed only upon the approval of a limited term permit per Section 20.52.040 (Limited Term Permits) of the Zoning Code.
d. Telecommunications facilities

3. Development Standards

The following development standards shall apply to the townhomes:

a. Lot Area

The minimum lot size shall be 1 acre.

b. Floor Area per Unit

2,400 sq ft minimum

3,200 sq ft maximum

c. Building Area

The maximum allowable gross floor area for the Lido Villas townhomes shall be 63,600 square feet consistent with original project approval.

d. Building Height

The maximum allowable building height for the townhomes shall be 31 feet 10 inches, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCDP.

Exceptions to Building Height

Deck railings may exceed the building height limit and shall not exceed 35 feet 4 inches in height, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCDP. Roof deck railings shall consist of transparent materials such as glass or frosted glass. Accessory structures on the roof deck

shall not be permitted to exceed 35' 4", measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCDP.

Architectural projections up to 39 feet shall be allowed for an architectural feature encompassing a vaulted ceiling and stairwell in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCDP. Harbor Units shall be limited to a maximum of 350 SF for this architectural projection and Island Units shall be limited to a maximum of 200 SF of area for this architectural projection up to 39 feet in height.

e. Building Setbacks

Via Lido-front

- 9 feet, first floor
4 feet 5 inches, second floor

Via Malaga-front

- 7 feet 3 inches, first floor
6 feet 6 inches second floor

Via Oporto-front

- 6 feet, first floor
3 feet, second floor

Interior property line to the north

- 5 feet

f. Parking

Two (2) enclosed private parking spaces shall be provided for each unit. ½ uncovered guest parking space shall be provided per unit for a total of 12 guest parking spaces. Each garage shall provide minimum clear interior dimensions of 17 feet 6 inches and shall be accessible to vehicles.

All parking spaces shall be maintained clear of obstructions for the parking of vehicles at all times. Vehicle parking and maneuvering areas shall be restricted to the operation, maneuvering and parking of operable vehicles and shall not be used for storage of any kind including the long-term storage of vehicles not in regular use.

g. Open Space

Common Open Space: 1,725 sq. ft. of common open space shall be provided for the community at a rate of 75 sq. ft. per dwelling unit) with a minimum dimension of 15 feet.

Private Open Space: 5 percent of the gross floor area shall be provided as private open space with a minimum width dimension of 6-ft

h. Landscaping

Minimum Landscape Requirements

- Landscaping shall incorporate current street tree species along Via Lido (Gold Medallion Tree, *Cassia Leptophylla*), Via Malaga (Gold Medallion Tree, *Cassia Leptophylla*) and Via Oporto (Water Gum, *Tristania Laurina*).
- Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar permanent barrier.
- Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the City Traffic Engineer.
- All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape and irrigation plans.
- All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris.
- All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
- Landscape planting and irrigation plans and specifications shall be submitted by the applicant for review and approval by the Building Division or Planning Division prior to the issuance of a building permit.

Site landscaping will be in accordance with Chapter 20.36 (Landscaping Standards) of the Zoning Code and Chapter 14.17 (Water-Efficient Landscaping) of the Newport Beach Municipal Code. Plants shall be adapted to the coastal climate of Newport Beach and appropriate to the specific soil, topographic, and sun/shade conditions of the project site. Drought-tolerant plants shall be used to the maximum extent practicable. Plant species having comparable water requirements shall be grouped together for efficient use of irrigation water. All plant materials shall conform to or exceed the plant quality

standards of the latest edition of American Standard for Nursery Stock published by the American Association of Nurserymen, or the equivalent. Plant selection shall be harmonious to the character of the project and surrounding projects and shall not be listed as an invasive species by the California Invasive Plant Council.

i. Irrigation Guidelines

An irrigation system shall be installed and shall incorporate appropriate locations, numbers, and types of sprinkler heads and emitters to provide appropriate amounts of water to all plant materials. Application rates and spray patterns shall be consistent with the varying watering requirements of different plant groupings.

Irrigation systems and controls shall include technology that minimizes over watering by either: (a) directly measuring soil moisture levels, plant types, and soil types and adjusting irrigation accordingly; or, (b) receiving weather information on a least a daily basis via satellite or similar transmission and adjusting irrigation accordingly. The irrigation system shall be designed so as to prevent over-watering and minimize overspray and runoff onto streets, sidewalks, driveways, buildings, fences, and windows consistent with water conservation and pollution run-off control objectives.

j. Lighting

Outdoor lighting standards will be in accordance with Section 20.30.070 (Outdoor Lighting) of the Zoning Code. Lighting of building interior common areas, exteriors and parking areas shall be developed in accordance with City Standards and shall be designed and maintained in a manner which minimized impacts on adjacent land uses. Nighttime lighting shall be limited to that necessary for security. The plans for lighting shall be prepared and signed by a licensed electrical engineer and shall be subject to review and approval of the Community Development Director or their designee.

k. Mechanical Equipment

Mechanical equipment shall not exceed 35 feet 4 inches in height and shall comply with Section 20.30.020 (Buffering and Screening) of the Zoning Code). All mechanical appurtenances on building roof tops and utility vaults shall be screened in a manner meeting the approval of the Director of Planning or their designee.

l. Telephone, Gas and Electrical Service

All “on site” gas lines, electrical lines and telephone lines shall be placed underground. Transformer or terminal equipment shall be visually screened from view from streets and adjacent properties.

m. Grading

Grading of the development area shall be conducted and undertaken in a manner both consistent with applicable grading manual, standards and ordinances of the City of Newport Beach and in accordance with a grading plan approved by the City of Newport Beach Building Division.

n. Outdoor Storage

The exterior of the units shall be maintained in accordance with Section 10.50.020 (Nuisance) of the City of Newport Beach Municipal Code.

3.2 Signs

A. Sign Allowance & Standards

1. If three or more signs are proposed for the development, a sign program for the Lido Villas Planned Community shall be submitted for review and approved by the City of Newport Beach Community Development Director or their designee. Sign allowance and standards will be in accordance with Chapter 20.42 (Sign Standards) of the Zoning Code.

4.0 SITE DEVELOPMENT REVIEW

4.1. Purpose

The purpose of the Site Development Review process is to ensure new development proposals within the Lido Villas Planned Community Development are consistent with the goals and policies of the General Plan, [the Lido Village Design Guidelines](#), and provisions of this Planned Community Development Plan, ~~the Development Agreement and the findings set forth below in sub-section 4.3.~~

4.2 Application

Prior to the issuance of building permits for the proposed project, a site development review shall be required for the Lido Villas Planned Community development in accordance with the applicability, application materials, application fees, review authority, public notice and hearing procedures, findings and decision, minor changes by Director, and expiration and post-decision procedures set forth in Section 20.52.080 (Site Development Reviews) of the Zoning Code.

Attachment No. PC 3

Draft Planning Commission Minutes

Commissioner Kramer commented on a prior case under similar circumstances at 407 East Balboa Boulevard.

Mr. Zdeba noted that the property was considered prior to the adoption of the new Zoning Code and commented on the specific circumstances considered at the time. He further clarified that the modification permit granted under the old Zoning Code to 407 East Balboa Boulevard allowed an addition consistent with what is allowed by right in the new Zoning Code.

Commissioner Kramer commented on other physical features of the property.

Commissioner Ameri expressed sympathy for the applicant but felt that there are ways to reach the applicant's intent without having to demolish the property. He addressed the Planning Commission's limit to authority in terms of the ability change the Code. He expressed concerns with setting a precedent.

Commissioner Myers commented on the need to revise the resolution and continue the matter.

Assistant City Attorney Leonie Mulvihill reported that if the intent of the Commission is to consider a resolution for approval, it could be approved at this time if sufficient information is provided to have staff develop a resolution for approval.

The maker of the motion would need to articulate the findings.

Commissioner Kramer indicated he cannot support the findings and will vote against the motion.

Chair Hillgren stated that he cannot support the findings, noted that the code allows for expansion of the property but expressed concerns with the proposal to have the structure built to the front setback line. He indicated support for the applicant's efforts to improve the property but stressed the need to comply with the code.

Motion made by Commissioner Myers and seconded by Commissioner Brown and failed (2 – 5), to deny adoption of Resolution No. 1918 denying Variance No. VA2013-002 and support issuance of the variance based on the fact that unique circumstances and conditions exist on the property and that strict compliance with the Zoning Code would deprive the subject property of privileges enjoyed by other properties in the vicinity and the granting of a variance is necessary for the preservation and enjoyment of the property rights of the applicant and will not constitute special privilege or be inconsistent with zoning and will not be detrimental to the neighborhood. Facts in support would be that the property has been in existence for seventy-three (73) years. Special circumstances would include that the property was built prior to significant zoning changes, is currently well-maintained and that compliance with the Zoning Code would constitute an economic hardship for the homeowners.

AYES: Brown and Myers

NOES: Ameri, Hillgren, Kramer, Lawler, and Tucker

Motion made by Vice Chair Tucker and seconded by Commissioner Kramer and carried (5 – 2), to adopt Resolution No. 1918 denying Variance No. VA2013-002.

AYES: Ameri, Hillgren, Kramer, Lawler, and Tucker

NOES: Brown and Myers

ITEM NO. 4 LIDO VILLAS (PA2012-146)

Site Location: 3303 and 3355 Via Lido

Assistant Planner, Makana Nova, presented details of the staff report addressing location, description of the project, General Plan, Coastal Land Use Plan, and Zoning Code amendments, Site Development Review, Tentative Tract Map, and Mitigated Negative Declaration. She addressed surrounding properties, properties associated with the project site, abandoned alley running through the property, existing conditions, parking, existing structures, density, and additional units. She reported details of the proposed amendments and noted that the appropriate tribal consultation notices had been distributed. She noted that the Coastal

Commission has commented on the proposed land-use changes and loss of parking opportunities. Ms. Nova addressed development standards, the goals of the planned community, the site plan, number of proposed units, access, on-site parking, impacts to on-street parking, and reduction in traffic trips by the proposed changes in land uses. She addressed standard setbacks, proposed project-specific setbacks, elevations, limits to structure heights, architectural elements, and noted that the project is subject to the Lido Village Design Guidelines.

Ms. Nova emphasized the goals of the Lido Village Design Guidelines relative to compatibility to surrounding land uses, architectural theme, and the use of high-quality building materials. She addressed open space areas, common areas, landscaping, easements, emergency access, required improvements as part of the tract map approval, and the public comment period related to the Mitigated Negative Declaration. She listed the public comments received from other agencies and residents and referenced the mitigation monitoring program relative to air quality, cultural resources, and management of hazardous materials during demolition and construction. She presented findings and recommendations to continue the item to the Planning Commission meeting of September 5, 2013.

Vice Chair Tucker asked for a plan indicating which materials will be used on elevations and commented on the Design Guidelines.

Principal Planner Jim Campbell reported that the Design Guidelines were reviewed by a Citizens Advisory Panel and were adopted by resolution by the City Council. He added that the Planning Commission would determine if the project is consistent with the Design Guidelines.

Assistant City Attorney Mulvihill added that the Design Guidelines are meant to represent, conceptually, what the design in the area should look like. They are guidelines for the Planning Commission to consider whether the area conforms to those guidelines.

Vice Chair Tucker commented on the Conditions of Approval and inquired regarding landscaping versus hardscaping.

Ms. Nova commented on spaces that have been identified as common areas and that there is a requirement to provide landscaping wherever possible adding that a lot of the interior hardscape will be used for vehicle circulation.

Vice Chair Tucker felt that the plan lacks landscaping near the areas where units are located. He wondered regarding whether anyone is able to buy the units or whether it would be for people with ambulatory disabilities.

Ms. Nova reported they are not exclusive to persons with disabilities.

In reply to Chair Hillgren's inquiry regarding a requirement for ADA compliant units, Ms. Nova responded in the affirmative and reported that the Building Division is charged with ensuring compliance with ADA requirements at plan check. She also addressed park and housing in-lieu fees, clarified that the fee is charged on a per unit basis, and that the fee will be required prior to recordation of the tract map.

Assistant City Attorney Mulvihill reported that this procedure is standard practice.

Ms. Nova noted that it is not the City's standard practice to review CC&Rs but that conditions could be added similarly to what is being proposed under the Uptown project.

Vice Chair Tucker felt that language should be added allowing the City an opportunity to enforce the CC&Rs. He referenced the PC text and a provision requiring a six-foot block wall between the commercial property and this property.

Ms. Nova reported that a six-foot block wall is proposed for the project and noted it is typical and required per the Zoning Code.

Vice Chair Tucker referenced a list of permitted and prohibited uses with the PC text and suggested eliminating reference to the prohibited uses or inserting language that prohibited uses are all of those uses not listed in the permitted uses. He addressed parking requirements and suggested adding language that garages be used for cars rather than storage. He reiterated the request for a list and example of the materials to be used.

Commissioner Kramer commented that this is not the first time the Commission has asked for a materials board and felt that it should be a standard practice as part of the application process.

Ms. Wisneski stated that material boards are available for this project.

Discussion followed regarding encouraging development in similar areas, being careful that what the Planning Commission approves is what the project will look like, the quality of the wood siding to be used, and including appropriate provisions within the CC&Rs.

Commissioner Brown referenced a letter from Robert Hawkins regarding the Design Guidelines and requested comments regarding the validity of his points.

Mr. Campbell reported receiving the letter this afternoon and noted that staff has not had a chance to review it. He agreed with Mr. Hawkins regarding the guidelines not being enforceable regulations and addressed the need to be consistent with the guidelines and compatible with the area. He requested an opportunity to review the matter further and return to the Planning Commission at the September 5, 2013, meeting. He reported that the 423 analysis is not an environmental issue but relates to requiring a vote of the electorate and is a procedural issue.

Vice Chair Tucker commented on the analysis and addressed the units requiring a General Plan amendment and those already authorized for residential. He noted that Charter Section 423 deals with density and effects on traffic. He encouraged staff to respond to the letter.

Commissioner Brown expressed concerns with parking and agreed with Vice Chair Tucker's recommendation regarding including language that garages be used for cars rather than storage.

Commissioner Kramer indicated support for the application but expressed concerns regarding the quality of the architectural design.

Ms. Nova indicated that the matter can be expanded upon within the PC text and that architectural design and building maintenance would be regulated under the CC&Rs.

Commissioner Kramer felt it would be appropriate to add detail within the PC text regarding architectural design requirements.

Ms. Nova reported that the project conforms to the Lido Village Design Guidelines, overall. She agreed that the issue merits additional consideration and discussion.

Deputy Community Development Director Wisneski added that design issues can be further discussed and addressed at the September 5th Planning Commission meeting.

Discussion followed regarding relocation of the existing church.

Commissioner Ameri expressed concerns regarding guest parking.

Vice Chair Tucker referenced the Coastal Section of the Design Guidelines and highlighted pictures illustrating some of the concepts.

Chair Hillgren reported on a similar project by the developer that can be seen in order to obtain a sense of the materials to be used. He addressed the importance of setbacks and height limitations.

Ms. Nova reported on the establishment of setbacks on all streets facing frontages and addressed differences in first- and second-floor setbacks and future improvement of adjacent rights-of-ways for pedestrian uses. She added that trees on street-facing frontages will be replaced with new street trees and reported the heights of existing and proposed structures.

Mr. Campbell commented on the various heights and impacts to surrounding areas.

Motion made by Vice Chair Tucker and seconded by Commissioner Brown and carried (7 – 0) to continue the matter to the Planning Commission meeting of September 5, 2013.

AYES: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker
NOES: None

ITEM NO. 5 HOUSING ELEMENT UPDATE (PA2012-104)
Site Location: 100 Civic Center Dr., Newport Beach

Assistant Planner Melinda Whelan presented details of the final draft of the Housing Element and noted it is the only element within the General Plan that requires review by the State the Department of Housing and Community Development (HCD) which has specific guidelines and requirements. She addressed the goals and purpose of the Housing Element and presented background and previous review of the matter as well as consideration and action by Council. She highlighted the changes recommended by Council relative to the removal of the Inclusionary Housing Program. Ms. Whelan addressed findings and presented recommendations as listed in the report.

Discussion followed regarding applicability of the in-lieu affordable housing fee and options available to Council regarding the matter.

Interested parties were invited to address the Planning Commission on this item.

Jim Mosher commented on the removal of the in-lieu affordable housing fee and streamlining the process with HCD. He referenced a conference call and changes made and felt that the changes are not specified in the report and should be included in Council packets. He addressed a CEQA finding within the resolution and suggested including addressing a finding of some kind.

There being no others wishing to address the Planning Commission, Chair Hillgren closed the public hearing.

Motion made by Vice Chair Tucker and seconded by Commissioner Brown and carried (7 – 0) to adopt a resolution recommending adoption of the 2014-2021 Housing Element Update to the City Council.

AYES: Ameri, Brown, Hillgren, Kramer, Lawler, Myers, and Tucker
NOES: None

ITEM NO. 3 UPTOWN NEWPORT MSDR (PA2013-129)
Site Location: 4311-4321 Jamboree Road

Commissioner Lawler reported a business interest with a property located near the subject property and recused himself from hearing the aforementioned time and requested being excused for the remainder of the meeting. Commissioner Lawler's request was granted and he departed the chambers at this time.

Associate Planner Rosalinh Ung presented details of the report and addressed approved entitlements for the project, identification of a two-phase process, the purpose of the Master Site Development Review, and compliance with zoning documents. She addressed architectural focal points at each end of the entry drive at the Fairchild intersection and recommendations that the Planning Commission review these for compliance with applicable provisions. She referenced written comments received from Jim Mosher and noted that the Zoning Administrator recently approved a Tentative Parcel Map to subdivide the existing two (2) parcels into four (4) parcels. She noted that no development for improvements are proposed as part of

Attachment No. PC 4

Public Comment Letters

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FAX COVER SHEET

TRANSMITTED TO:

NAME	FAX NUMBER	PHONE NUMBER
Kimberly Brandt; Makana Nova	(949) 644-3229	
Leilani Brown, City Clerk	(949) 644-3039	

From: Robert C. Hawkins

Client/Matter: Friends

Date: August 22, 2013

Documents: Comments on Lido Villas MND

Pages: 3*

COMMENTS: Original will follow as indicated.

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LAW OFFICES OF ROBERT C. HAWKINS

August 22, 2013

Via Facsimile Only

Michael L. Toerge, Chair
Members of the Planning Commission
c/o Makana Nova, Assistant Planner
Department of Community Development
City of Newport Beach
100 Civic Center Drive, Area "C"
Newport Beach, California 92660

Re: Comments on the Mitigated Negative Declaration ("MND") for the Lido Villas Project- (PA2012-146) located at 3303 and 3355 Via Lido (the "Project").

Greetings:

Thank you for the opportunity to comment on the captioned matter. This firm represents Friends of Dolores, a community action group dedicated to ensuring compliance with state and local laws including the California Environmental Quality Act, Public Resources Code sections 21000 et seq., Friends of City Hall, a community action group dedicated the preservation of the "City Hall" area for civic purposes, and others in the City in connection with the captioned matter.

Although we have not had an opportunity to comment on the captioned DMND and plan to offer extensive comments at any subsequent hearing, we offer these initial comments on an important matter ignored in the DMND and misunderstood in the Staff Report: the Section 423, Greenlight initiative, requires a vote for the captioned project.

The California Environmental Quality Act, ("CEQA"), Public Resources Code sections 21083 and 21083.5 requires that environmental analysis include an analysis of the Project's cumulative impacts. However, the MND contains no such analysis. Importantly, it fails to analysis the pending City Hall Re-use Project.

More importantly, the MND contains no analysis of the Greenlight requirements of the City's Charter. Section 423 requires:

14 Corporate Plaza, Suite 120
Newport Beach, California 92660
(949) 650-5550
FAX: (949) 650-1181

Michael L Toerge, Chair
Members of the Planning Commission

- 2 -

August 22, 2013

"Charter Section 423 requires an analysis of the density, intensity, and peak hour traffic associated with a proposed General Plan Amendment ('GPA'). When increases in density, intensity, and peak hour traffic of a proposed GPA 11 along with 80 percent of the increases of prior amendments exceed specified thresholds, the proposed GPA is considered to be a 'major amendment' that requires voter approval. The specified thresholds are 100 dwelling units (density), 40,000 square feet of floor area (intensity), and 100 peak hour trips (traffic). City Council Policy A-18 establishes the Guidelines for implementation of City Charter Section 423 and provides specific guidance as to the density, intensity and traffic thresholds for the analysis."

City Hall Reuse, Negative Declaration, page 112-113 (Emphasis in original). The Negative Declaration and supporting Staff Reports recognized that the City Hall Reuse Project which includes 99 residential units would take all units and square footage under Section 423. Therefore, the City Hall Reuse environmental document and supporting staff reports recognize that the Project requires a vote.

The Staff Report attempts to include a Section 423 analysis but it fails to consider the City Hall Reuse Negative Declaration. This Commission heard and recommended approval of the City Hall Reuse MND but the City Council continued the matter "indefinitely." The City Hall Reuse Negative Declaration remains the only environmental analysis for the City Hall Reuse Project, which includes 99 dwelling units.

Staff may argue that the Council has decided not to move forward with the residential project and therefore the above is inapplicable. However, this is in error. As indicated above, the only environmental analysis of the City Hall Reuse Project remains the Negative Declaration. The City has not withdrawn that document or issued a Notice regarding any proposed alternative project. Hence, under the current sets of Project, the captioned Project will require a vote under Section 423.

The MND must be revised to include analysis of the Section 423 problems.

In addition, the MND refers to the Lido Village Village Design Guidelines. However, these Guidelines are not regulatory and have not regulatory effect. Nonetheless, the MND still regards them as regulatory and relies on the Guidelines to show that the Project will have no impacts. The MND must be revised to include an analysis of the environmental impacts for the compliance with such non regulatory Guidelines.

In conclusion, the MND is totally inadequate. Good and sound policy reasons and good planning require the preparation of an EIR. Such an EIR would analyze all impacts including Section 423 and those caused by compliance with any guidelines, and any other impacts, would include a discussion of Project alternatives which is necessary for the Project to go forward, and would allow the City to override any significant an unmitigated impacts.

Michael L Toerge, Chair
Members of the Planning Commission

- 3 -

August 22, 2013

Thank you, again, for the opportunity to comment on the FMND. Please provide us with notice of any responses to these comments in a non-italicized format and with notices of any and all hearings on the captioned project and fmnd.

Of course, should you have any questions, please do not hesitate to contact me.

Sincerely,

LAW OFFICES OF ROBERT C. HAWKINS

By: Robert C. Hawkins

RCII/kw

cc: Leilani Brown, City Clerk (Via Facsimile Only)

14 Corporate Plaza, Suite 120
Newport Beach, California 92660
(949) 650-5550
Fax: (949) 650-1181

Item No. 4 Lido Villas (PA2012-146)

1. I am pleased to see (under “Additional Materials Received” on the [meeting page](#)) that the project architect is asking for a continuance of this hearing to September 5, since I, too, have not had time to adequately review the large volume of material related to this project, and noticed a number of typographical errors, inconsistencies and questionable statements in the part I did review.
2. At this point, although it may seem a small point, I am particularly concerned about the statements regarding the circulation period for the Mitigated Negative Declaration (page 22 of the staff report, and Section 2.2 of the proposed Resolution of Approval).
 - a. Although the unofficial Planning [Case Log](#) says (under the 07/15/2013 entry) “REVIEW PERIOD ENDS AUGUST 14, 2013,” and although the staff report and resolution say the review period ended August 13, as far as I know the public never saw anything other than a statement that comments had to be received by 5:00 pm on Monday, August 12. That was, and remains, the due date shown on the [Notice of Intent](#) (both on-line and enclosed with the MND copies in the City libraries), as well as the due date announced in the initial City “News Splash” which, to the best of my knowledge, was never revised.
 - b. I am particularly sensitive to the lack of any public notification of an extension to August 13 (or 14??), if that occurred, since written comments on the August 13 City Council agenda items were also due at 5:00 pm on August 12, and I had to choose between one or the other. Had I known of the extension, I might well have submitted comments on August 13 (or 14??).
 - c. I am also concerned about whether the Office of Planning and Research comment period was legally required to run 30 days. If so, and if it started on July 15 as the staff report says, then the August 13 end date cited in the staff report and resolution would be one day short, since the start date is not counted under California law. For a full 30 day review, an August 14 end date would have been required as indicated in the Case Log, but apparently nowhere else. The public may have been given a due date two days short of the true one.
3. My other primary concern at this point is whether the 35-foot Shoreline Height Limitation has become a flexible guideline, as the staff report and resolution suggest it has. Obviously Coastal Commission staff believes the Coastal Commission understood it to be a hard and definite limit.

Attachment No. PC 5

Materials Board



HARBOR UNIT

- EX-02 CLEAR ANNODIZED ALUMINUM FINISH
- EX-01 SWISSPEARL ONYX 7099
- WD-01 STAINED CEDAR
- P-01 WHITE PAINTED WOOD SLATS
- GL-01 VIRACON VE1-85 GLAZING
- GL-02 FRIT GLAZING WITH WHITE FRIT STRIPE PATTERN
- WD-01 STAINED CEDAR



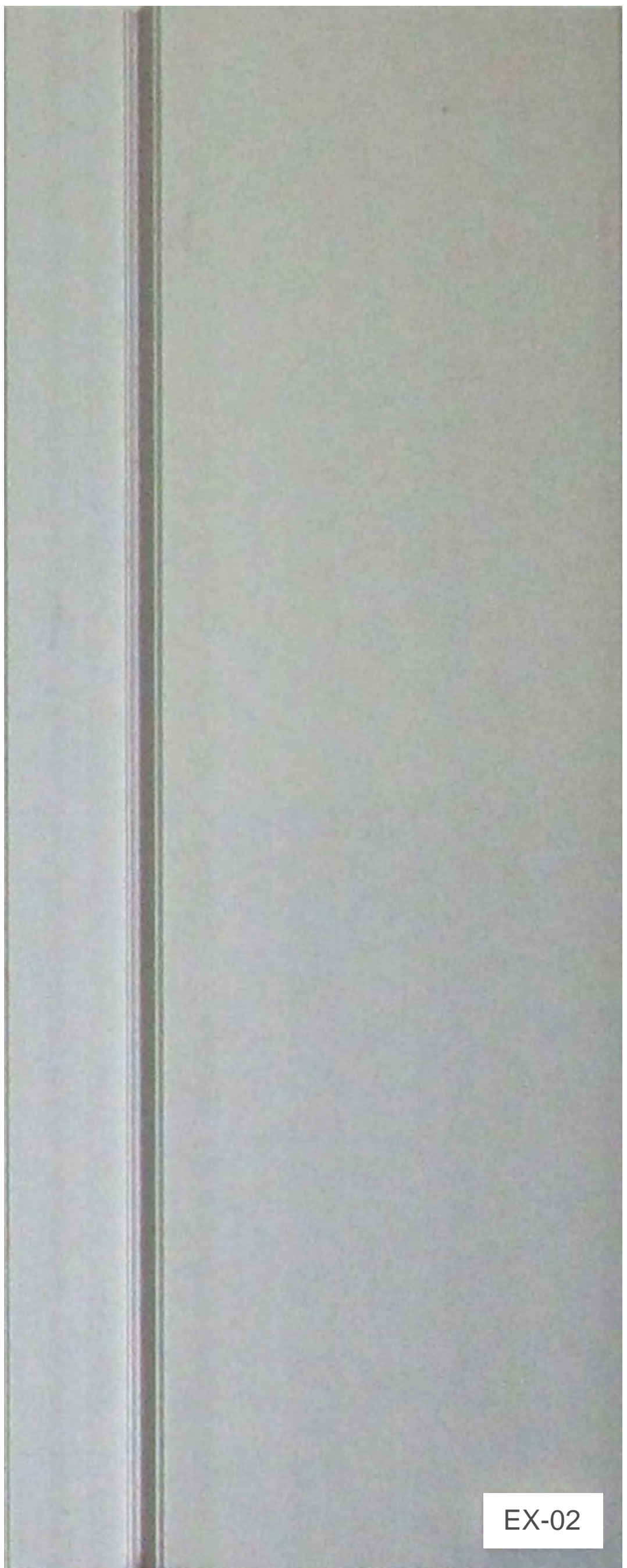
EX-01



EX-04



GL-01



EX-02



ISLAND UNIT

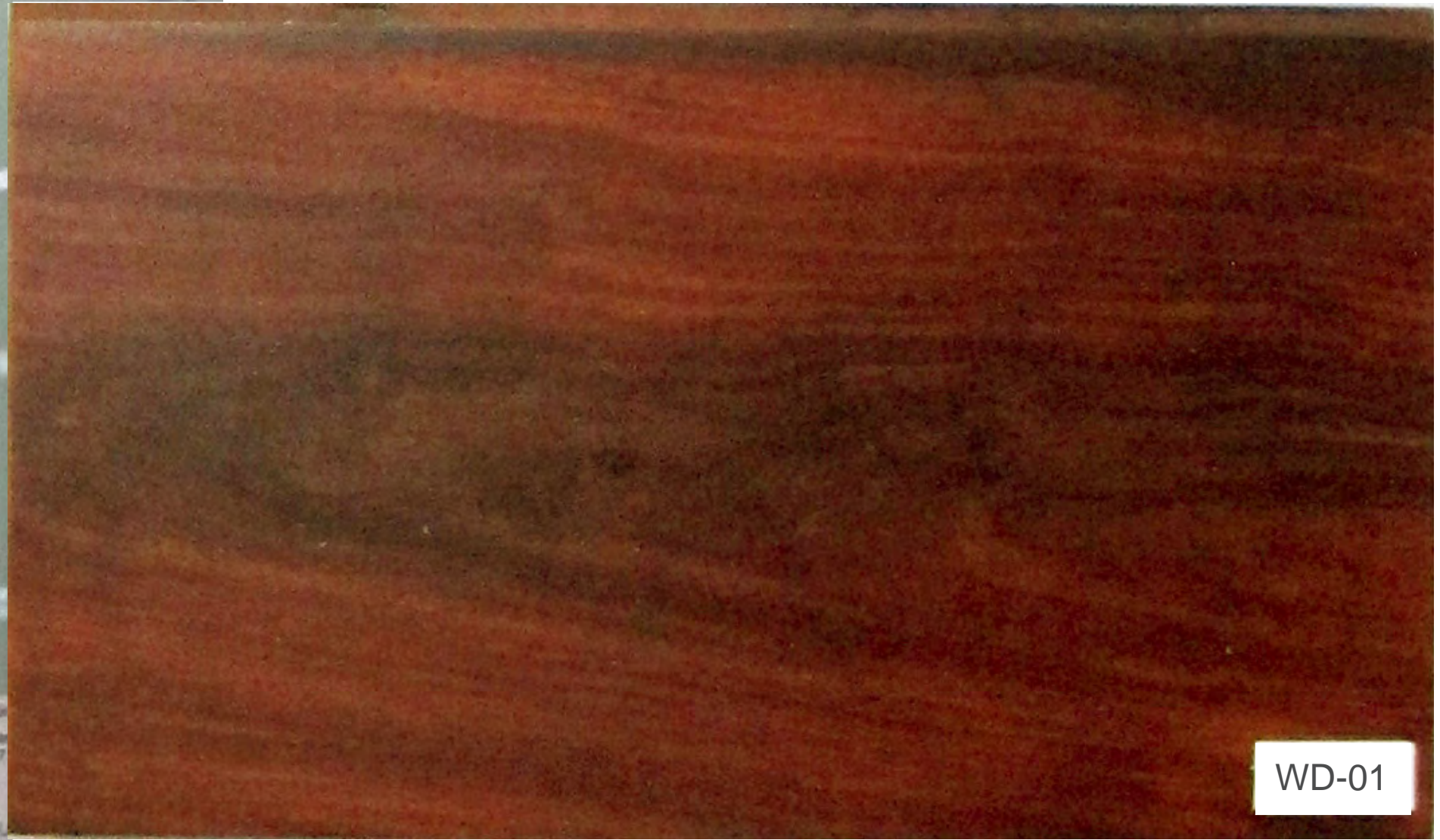
- EX-04 SWISSPEARL AGATE 7219
- EX-02 CLEAR ANNODIZED ALUMINUM FINISH
- GL-01 VIRACON VE1-85 GLAZING
- EX-03 WOOD HANDRAIL
- WD-01 STAINED CEDAR



GL-02



P-01



WD-01

Attachment No. PC 6

Detailed Elevations

HARBOR
UNIT



ISLAND
UNIT



Attachment No. PC 7

Calculation of Hardscape and Landscape
Areas



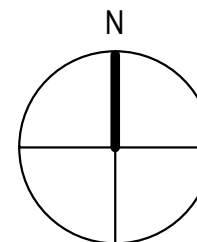
S+D SHUBIN+DONALDSON ARCHITECTS INC.

PLANNED COMMUNITY DEVELOPMENT PLAN

D-20 SITE EXHIBIT

LANDSCAPE DIAGRAM

SCALE: 1" = 40'-0"





S+D SHUBIN+DONALDSON ARCHITECTS INC.

PLANNED COMMUNITY DEVELOPMENT PLAN

OPEN SPACE ANALYSIS

OPEN SPACE LANDSCAPE/HARDSCAPE DIAGRAM

SCALE: 1" = 40'-0"

Attachment No. PC 8

Discussion of MND Cumulative Analysis
Including the City Hall Site



August 30, 2013

Makana Nova, Assistant Planner
Newport Beach Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

RE: LIDO VILLAS (PA2012-146) - RESPONSES TO COMMENTS FROM THE LAW OFFICES OF ROBERT C. HAWKINS

Dear Ms. Nova:

On August 22, 2013, the City of Newport Beach received a letter from the Law Offices of Robert C. Hawkins (herein, "Comment Letter") commenting on the proposed Lido Villas Project (PA2012-146; herein, "proposed Project") and associated Mitigated Negative Declaration (MND). Although the Comment Letter was received after the close of the MND's public review period and the City is not required to respond in writing, this letter addresses the CEQA-related concerns raised in the Comment Letter to demonstrate that there is no substantial evidence that the proposed Project will have a significant direct or cumulatively considerable impact on the environment.

Specifically, the Comment Letter incorrectly indicates that the MND prepared in support of the Lido Villas Project fails to consider potential cumulative impacts, including cumulative impacts associated with the pending City Hall Re-Use Project.

The City prepared a Draft MND (DMND) for the City Hall Re-Use Project in November 2012. That project consists of a proposal to amend the City's General Plan Land Use Element, Coastal Land Use Plan, and Zoning Code as they apply to the former City Hall property to allow for the future redevelopment of that property that could include up to 99 dwelling units and/or other mixed uses. A specific re-use development plan was not proposed and would be subject to subsequent CEQA review upon its proposal. Although the City Hall Re-Use Project DMND was not approved or otherwise acted upon by the City Council, the Lido Villas Project MND did indeed consider the project as part of its cumulative effects analysis.

The cumulative impacts of the proposed Lido Villas Project are discussed and addressed in MND Section 5.4.18.1 under the discussion and analysis of Issue b), and the analysis explicitly considers cumulative effects associated with the City Hall Re-Use Project. A list of the cumulative development projects considered in the analysis is provided as Technical Appendix F to the MND. As indicated in MND Technical Appendix F, the Lido Villas MND considers a total of 31 cumulative development projects, including the City Hall Re-Use Project (referred to in Technical Appendix F as the "Old City Hall Complex Redevelopment").

The Comment Letter does not identify any specific issue area(s) for which the cumulative impact analysis provided in MND Section 5.4.18.1 is deficient. Nonetheless, a brief summary of the findings of the cumulative impact analysis is provided below, with particular emphasis on the potential cumulative effects associated with the City Hall Re-Use Project. As shown, there is no substantial evidence to indicate that the proposed Lido Villas Project would result in a significant, cumulatively considerable impact on the environment when considered in context with the City Hall Re-Use Project.

- Aesthetics (MND Pages 5-118 and 5-119). The cumulative impact analysis for the issue of Aesthetics explicitly considers the City Hall Re-Use Project. Although the City Hall Re-Use Project DMND indicates the potential for significant aesthetic effects if that project were to move forward, the DMND includes Mitigation Measures MM 4.1-1 through MM 4.1-4 to reduce those potential effects to below levels of significance. Further, because no specific development plan is pending for the City Hall site, the Lido Villas MND appropriately relied on the conclusions drawn and mitigation measures presented in the City Hall Re-Use Project DMND. The analysis of the proposed Lido Villas Project concludes that cumulative impacts to aesthetics would be less than significant and that the Project's contribution would be less than cumulatively considerable because the Project would have no potential to adversely affect scenic vistas or scenic highways, and, like the City Hall Re-Use Project, would be conditioned upon consistency with the Lido Village Design Guidelines. Consistency with the Lido Village Design Guidelines is ensured through City staff review of site plans, architecture plans, landscape plans, lighting plans, and other documentation that accompanies permit applications for development in the geographic area covered by the guidelines. Furthermore, the proposed Project and all cumulative developments in its viewshed (including the City Hall Re-Use Project) would be required to comply with Section 20.30.070 (Outdoor Lighting) of the City's Zoning Code and would be reviewed for consistency with the lighting provisions of the Lido Village Design Guidelines, which would preclude cumulatively significant lighting impacts. Additionally, the artificial lighting intensity produced by the Lido Villas Project after its development would be no greater than occurs on the site under existing conditions. Thus, the proposed Project would not increase the overall cumulative effect associated with light and glare as compared to the existing condition. Further, should the City Hall Re-Use Project go forward, it would be conditioned upon consistency with the Lido Village Design Guidelines, and any cumulative aesthetic effect would be less than significant.

As discussed in the MND under the analysis of Aesthetics (refer to Pages 5-18 and 5-19 of the proposed Project's MND), buildings proposed as part of the Lido Villas Project would be a maximum of 31 feet 2 inches in height, with architectural projections up to 39 feet. Although this represents a slight increase in height as compared to the 35-foot high commercial building that currently exists in the northern portion of the site, the proposed height increase would not result in any significant adverse effects to the scenic vistas described under the analysis of Aesthetics Issue a).

Likewise, as concluded in the City Hall Re-Use Project DMND (refer to Page 18), even though buildings with maximum heights of up to 55 feet and architectural features of up to 65 feet could occur on the former City Hall site if that project moves forward, it is unlikely that any structures that may be proposed on that site would adversely affect scenic vistas. The DMND includes photographs, measurements, and other evidence to conclude that because future structure(s) associated with the City Hall Re-Use Project would be located over one-half mile from important designated Public View Points and would blend into the background of existing development, impacts to scenic vistas would be less than significant.

There is substantial evidence included in the City Hall Re-Use Project DMND and the Lido Villas MND to demonstrate that although the proposed Lido Villas Project would result in an increase in building height on the property by four-inches for the roof deck and guard rails and four-feet for architectural projections as compared to the 35-foot height of the existing on-site commercial structure, such an increase in height would not significantly and/or adversely affect any scenic vistas

on a direct or cumulative basis.

The Lido Villas Project's proposed height increase also would not substantially degrade the existing visual character or quality of the site and its surroundings either directly or cumulatively. The proposed Project (and other projects within the proposed Project's immediate viewshed, including the City Hall Re-Use Project) would be conditioned upon consistency with the Lido Village Design Guidelines, including requirements for architecture and landscaping. Moreover, the increase in building height proposed by the Project would be attenuated by its architectural concept, which includes off-setting planes, variable rooflines, ground-level landscaping, railings along the upper floors, and a street frontage dominated by glazing. As concluded in the proposed Project's MND, "...the Project's architecture would represent an aesthetic improvement over the existing commercial office building, which features somewhat outdated architectural characteristics and lacks off-setting planes and variable roofline features" (MND at Page 5-20). Similarly, and as concluded in the DMND for the City Hall Re-Use Project, "...the future design and construction of the proposed mixed use development would generally be compatible in scale, design, character, and quality to existing uses because...such development and/or redevelopment must comply with the City's existing land use development standards and architectural design guidelines prescribed in the Lido Village Design Guidelines document as well as other City policies and regulations" (DMND at Page 35). Accordingly, although both the City Hall Re-Use Project and the proposed Project would result in taller buildings as compared to the buildings that occur on those properties under existing conditions, such height increases would not result in a cumulatively considerable impact to the existing visual character or quality of the site or its surroundings because aesthetic features would be incorporated to ensure that the visual character and quality of the sites and their surroundings would not be substantially degraded, and in some aspects even improved over the existing condition.

Based on the discussion presented above, and consistent with the evidence and conclusions provided in Section 5.4.18.1 of the Project's MND, the proposed Project's aesthetic effects would be less than cumulatively considerable.

- Agriculture and Forestry Resources (MND Page 5-119). As noted in the MND, the proposed Lido Villas Project would have no impact on agriculture and forestry resources. Specifically, the Project site is not mapped by the Farmland Mapping and monitoring Program as containing Prime Farmland, Unique Farmland, or Farmland of Statewide Importance ("Important Farmlands"). There also are no lands surrounding the Project site that are zoned for agricultural use or subject to a Williamson Act Contract. Additionally, there are no forestlands or other lands zoned for forest or timber use within the City of Newport Beach. There are no components of the proposed Project that could involve other changes to the existing environment, which, due to their location or nature, could result in the conversion of Important Farmlands or forestland to non-agricultural use or non-forest use. Accordingly, because the proposed Project would not result in any impacts to agricultural or forestry resources, the Project has no potential to result in cumulatively considerable impacts to agriculture or forestry resources.
- Air Quality (MND Page 5-119). For construction-related emissions, the MND demonstrates that Project-related emissions would be below the South Coast Air Quality Management District (SCAQMD) Regional and Localized Thresholds of Significance (refer to MND Tables 5-4 through 5-7), assuming mandatory compliance with Mitigation Measures MM AQ-1 and MM AQ-2. In accordance with guidance from the SCAQMD, "Projects that exceed the project-specific significance

thresholds are considered by the SCAQMD to be cumulatively considerable...Conversely, projects that do not exceed the project-specific thresholds are generally not considered to be cumulatively significant.”¹ The City appropriately followed SCAQMD guidance when determining the significance threshold for cumulative impacts. Thus, implementation of Mitigation Measures MM AQ-1 and MM AQ-2 would ensure that near-term construction impacts associated with the proposed Project would not be cumulatively significant. Furthermore, all construction projects in the City are required to comply with Chapter 15.10 (Excavation and Grading Code) of the City of Newport Beach Municipal Code, which establishes requirements for the control of dust during construction. For long-term operational conditions, the primary source of air quality emissions would be from Project-related traffic; but because the Project would result in a net reduction of 305 average daily vehicle trips (ADT) to and from the site (MND Table 5-10), the Project would result in a net reduction in air emissions. Thus, the proposed Project would have a long-term cumulative *benefit* to air quality. As such, under long-term operating conditions, the Project also has no potential to result in cumulatively considerable impacts to air quality.

- Biological Resources (MND Page 5-119). The MND concludes that the proposed Lido Villas Project would have no impacts to biological resources. Specifically, the proposed Project site is fully developed under existing conditions and contains no sensitive vegetation communities providing habitat for any candidate, sensitive, or special status plant or wildlife species. The proposed Project site also does not contain any federally protected wetlands or jurisdictional drainages, and does not serve as a wildlife movement corridor. As noted in the proposed Project’s MND (refer to Pages 5-39 to 5-40), the Project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. The proposed Project site also is not identified for conservation as part of the Orange County Central and Coastal Orange County NCCP/HCP, and would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. Because the proposed Lido Villas Project has no potential to result in adverse effects to biological resources, the Project also has no potential to result in cumulatively considerable impacts to biological resources.
- Cultural Resources (MND Pages 5-119 and 5-120). As concluded in the MND, the Lido Villas Project would not impact any historical resources, and therefore has no potential to contribute to cumulative historical resource impacts. With respect to the issue areas of archaeological and paleontological resources, the MND identifies Mitigation Measures MM CR-1 and MM CR-2 to ensure that in the unlikely event that resources are uncovered during construction of the proposed Project, they would be appropriately treated to reduce impacts to below a level of significance. Similar mitigation requirements (SC 4.5-1 and MM 4.5-1) were imposed on the City Hall Re-Use Project as part of the City Hall Re-Use Project DMND. The City of Newport Beach and other lead agencies impose similar requirements for the discovery and treatment of archaeological or paleontological resources during construction processes. Accordingly, the proposed Project would not result in any cumulatively considerable impacts to cultural resources.
- Geology and Soils (MND Page 5-120). As stated in the MND, impacts due to geology and soils are

1 South Coast Air Quality Management District, 2003. *White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution*. Page D-3. August 2003. Available on-line at: http://www.aqmd.gov/rules/ciwc/final_white_paper.pdf.

site-specific in nature and the proposed Project therefore has no potential to result in cumulatively considerable impacts to this issue area. Additionally, all development projects in the State of California (the Lido Villas Project and the City-Hall Re-Use Project included) are required to conform to the California Building Code (CBC), which requires strict adherence to structural design standards to attenuate hazards associated with potential geotechnical hazards such as seismic ground shaking. Considering these facts, there is no potential for a significant cumulative geology or soil impact to occur.

- Greenhouse Gas Emissions (MND Page 5-120). The analysis of impacts due to greenhouse gas (GHG) emissions is inherently cumulative in nature, because it relates to climate change across Earth. No individual, small development project such as the proposed Lido Villas Project has the potential to change the Earth's climate. As concluded in the MND, the proposed Project also has no potential to result in cumulatively considerable impacts associated with GHGs. The proposed Project would result in a net reduction of GHG emissions as compared to the existing condition (see Table 5-8 and associated discussion in the proposed Project's MND), primarily related to the reduction in daily vehicle trips that would occur to and from the site after the Project is implemented. Thus, the Project would have a long-term cumulative *benefit* to (reduction of) GHG levels. For this reason, the Project has no potential to result in significant and cumulatively considerable impacts associated with GHG emissions. Additionally, the DMND for the City Hall Re-Use Project concludes that GHG emissions associated with redevelopment of the City Hall site also would be less than significant.
- Hazards and Hazardous Materials (MND Pages 5-120 and 5-121). Assuming implementation of Mitigation Measures MM HM-1 and MM HM-2 (relating to site-specific lead-based paints and asbestos containing materials), impacts under this issue area would be less than significant. A similar requirement is identified in the City Hall Re-Use Project DMND as Standard Condition SC 4.7-2. With mitigation measures applied to both projects, impacts due to lead-based paints and asbestos containing materials would be less than cumulatively considerable. There are no components of the proposed Project's construction or operational characteristics that would result in the potential for cumulatively considerable effects due to hazards or hazardous materials.
- Hydrology and Water Quality (MND Page 5-121). The analysis contained in the MND and its Technical Appendices C and D concludes that with mandatory compliance with site-specific Storm Water Pollution Prevention Plans (SWPPP) and Water Quality Management Plans (WQMP), impacts associated with hydrology and water quality would be less than significant. During development and long-term operation of the City Hall Re-Use Project should it move forward, the City similarly would be required to prepare and implement SWPPPs and WQMPs to preclude significant direct and cumulative impacts due to hydrology or water quality concerns (as indicated in the City Hall Re-Use Project DMND on Pages 74 through 81). Additionally, and as concluded on Page 5-121 the Lido Villas MND, the proposed Project and cumulative development projects (including the City Hall Re-Use Project) have been reviewed by the City and have no potential to significantly and adversely affect implementation of hazard management plans.
- Land Use and Planning (MND Pages 5-121 and 5-122). As concluded in the MND, the proposed Lido Villas Project would not result in any environmental impacts due to consistency findings associated with applicable habitat conservation plans, natural community conservation plans, or any other applicable land use plans, policies, or regulations that were adopted for the purpose of avoiding

or mitigating an environmental effect. The City Hall Re-Use Project DMND similarly concludes that impacts to Land Use and Planning would not occur or would be less than significant (as indicated on pages 81 to 96 of the City Hall Re-Use Project DMND). Both projects are consistent with applicable General Plan policies and would be conditioned upon consistency with the provisions of the Lido Village Design Guidelines. Consistency with the Lido Village Design Guidelines is ensured through City staff review of site plans, architecture plans, landscape plans, lighting plans, and other documentation that accompanies permit applications for development in the geographic area covered by the guidelines. There are no components of the proposed Project or the City Hall Re-Use Project that could result in cumulatively significant impacts to the issue area of Land Use and Planning. There is also no cumulative potential for the physical division of an established community, as both the proposed Project site and City Hall site are already developed under existing conditions and would be redeveloped as part of their respective proposed Projects within their parcel boundaries.

- Mineral Resources (MND Page 5-122). Both the proposed Project site and the City Hall site are developed under existing conditions, and contain no mines, wells, other extraction activities, or lands mapped as containing valuable mineral resources. The proposed Lido Villas Project would have no impact to mineral resources, and therefore has no potential to result in cumulatively considerable impacts under this issue area.
- Noise (MND Page 5-122). The discussion and analysis of the proposed Project's cumulative impacts to Noise explicitly discusses cumulative impacts associated with the proposed Project and the City Hall Re-Use Project. As concluded in that discussion, construction activities in the City of Newport Beach are exempt from the City's Municipal Code Section 10.26 (Community Noise Control), provided such activities adhere to the timing restrictions specified in Section 10.28 (Loud and Unreasonable Noise). Both the proposed Project and the City Hall Re-Use Project would be required to comply with the timing restrictions specified in Section 10.28; accordingly, construction-related noise impacts would be less than cumulatively considerable even in the unlikely event that both projects were under simultaneous construction. Under long-term operating conditions, the residential use proposed by the Lido Villas Project would not result in substantial noise that could violate any applicable noise standards. Additionally, vehicular traffic associated with the proposed Project would be reduced as compared to the existing condition (thereby indicating that noise from vehicular traffic would be reduced). Thus, the Project would have a long-term cumulative *benefit* to (reduction of) vehicular noise. Accordingly, the Project has no potential for resulting in cumulatively considerable noise impacts under long-term operation.
- Population and Housing (MND Page 5-122). The MND concludes that the Project would result in an increase in the City's population by approximately 50 persons. Although other cumulative development projects (including the City Hall Re-Use Project should it go forward and should it ultimately contain residential units) could also result in an increase in the City's population, the MND concludes that there would be no impacts or less than significant impacts to the environment resulting from the cumulative effect of population growth within the City. The Lido Villas Project and City Hall Re-Use Project also would result in no impacts due to the displacement of substantial numbers of existing housing or people because no housing units currently exist on either site. The City Hall Re-Use Project DMND similarly concludes that an increase to the City's population would not result in any significant environmental effects (refer to Pages 101-102 of the City Hall Re-Use Project DMND). For these reasons, the proposed Project has no potential to result in cumulatively

considerable impacts associated with such effects.

- Public Services (MND Page 5-123). The MND concludes that there would be no increase in demand for fire protection or police protection services as a result of the proposed Project; as such, there would be no cumulatively considerable impact. As indicated on MND Page 5-123, although the proposed Project would result in approximately five new elementary school students, three middle school students, and three high school students, the proposed Project and all other cumulative development projects would be required to contribute fees in accordance with Public Education Code § 17072.10-18, which would provide necessary funding for school facilities. Additionally, the analysis concludes that the Newport Mesa Unified School District (NMUSD) has determined that its existing school facility capacity is adequate to serve the population, and there are no plans for expansion of its school facilities to accommodate projected growth. As such, the generation of new students from the proposed Project and cumulative developments would not result in nor require expanded school facilities, the construction of which could result in impacts to the environment. The DMND for the City Hall Re-Use Project similarly concludes that the payment of school impact fees would constitute full mitigation as stipulated by law, and impacts on the environment are therefore less than significant. The analysis in the Lido Villas MND also concludes that impacts to library facilities would be less than significant due to changes in technology (i.e., the use of electronic media in lieu of hard copy media) and because the City's library facilities are more than adequate to serve the City's existing and projected population; such findings also are consistent with the analysis and conclusions presented in the City Hall Re-Use Project DMND. Accordingly, cumulatively considerable significant impacts to public services would not result from implementation of the proposed Project.
- Recreation (MND Pages 5-123 and 5-124). The proposed Project's MND concludes that there are adequate existing and planned recreational facilities within the City's Service Area I to meet the recreation demands that would be caused by the projected increase in the City's population, including future residents from the City Hall Re-Use Project should that project go forward and should residential units ultimately occur on that site. The proposed Lido Villas Project also would be required to contribute fees to the City's park funds, pursuant to City Council Resolution No. 2007-30, which would enable the City to provide for new or improved park facilities within the City to serve City residents and future residents of the proposed Project. Furthermore, both projects are located on the Balboa Peninsula where ample beach-related activities are predominate for local residents. Accordingly, cumulative effects due to the need for new or expanded recreation facilities, as well as cumulative effects caused by the physical deterioration of existing recreational facilities, would be less than significant on a cumulative basis. The demand for new and/or improved recreational facilities generated by the proposed Project's anticipated 50 residents would not be cumulatively considerable.
- Transportation/Traffic (MND Page 5-124). The proposed Project would result in a net decrease in traffic from the site by approximately 305 ADT as compared to the existing condition (MND Table 5-10). Thus, the Project would have a long-term cumulative *benefit* to (reduction of) traffic. As a result, the proposed Project would have no potential to result in cumulatively considerable impacts to roadways and transportation facilities. Similarly, the DMND for the City Hall Re-Use Project determined that impacts to transportation/traffic from implementation of that project, should it move forward, would be less than significant (refer to Pages 110-116 of the City Hall Re-Use Project



DMND). During construction, the proposed Lido Villas Project would not require the complete closure of any public or private streets or roadways during construction, although the western half of Via Lido would be temporarily closed northerly of Via Malaga for two weeks during installation of the Project's sewer connection. During this time, traffic control measures would be required pursuant to Chapter 12.62 (Temporary Street Closure) of the City's Municipal Code. Accordingly, in the even in the unlikely event that construction of the City Hall Re-Use Project occurs simultaneously, temporary construction activities would not impede use of the road for emergencies or access for emergency response vehicles. Therefore, the Project would not result cumulatively considerable impact to traffic circulation or emergency access during the construction period, and no impact would occur.

- Utilities and Service Systems (MND Page 5-124). The proposed Project would result in a net decrease in the amount of wastewater and solid waste generated by the site, and also would result in a reduction in the site's demand for water resources. Thus, the Project would have a long-term cumulative *benefit* to (reduction of) demand on utilities and service systems. Accordingly, the proposed Project has no potential to result in significant and cumulatively considerable impacts.

In closing, CEQA Guidelines Section 15130 sets forth the requirements for a cumulative impact analysis and the Lido Villas MND properly analyzes cumulative effects. CEQA Guidelines Section 15130 recognizes that the discussion of cumulative impacts need not be as detailed as the discussion of project specific impacts, and that the discussion should be guided by standards of *practicality* and *reasonableness*. An exhaustive analysis is not required. In any case, the Lido Villas MND discloses the City's basis for the scope of its cumulative impacts analysis and MND Technical Appendix F sets forth the cumulative projects list that was derived by following City standards. As a result, the City considered the cumulative impacts from a more-than-reasonable list of 31 nearby projects, including the City Hall Re-Use Project.

As concluded in the summary above and in MND Section 5.4.18.1 under the discussion and analysis of Issue b), and assuming the incorporation of the mitigation measures (all of which are summarized in MND Section 6.0, *Mitigation Monitoring and Reporting Program*), the proposed Lido Villas Project would not result in any significant and cumulatively considerable environmental effects.

If you should have any questions or require additional clarification, please do not hesitate to contact me at (619) 501-6041, or via e-mail at jharding@tbplanning.com.

Sincerely,

T&B PLANNING

A handwritten signature in blue ink, reading 'Jeramey Harding', is written over the printed name and title.

Jeramey Harding, AICP
Senior Project Manager

Lido Villas



Planning Commission, Public Hearing
3303 and 3355 Via Lido
September 5, 2013



Project Summary

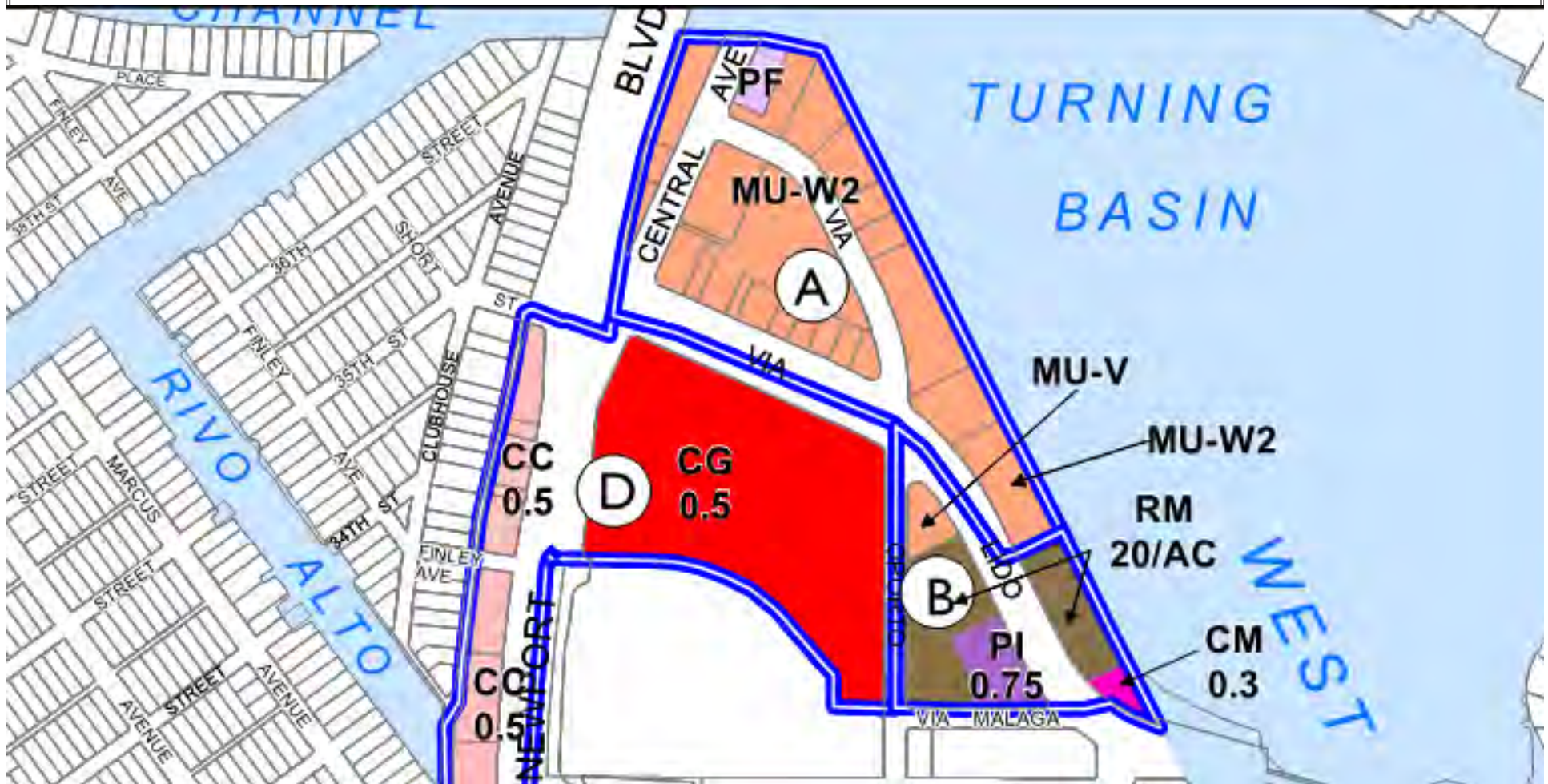
- Demolish 3-story office/retail building, church, and 56-space parking lot
- Construct 23 townhouse-style condominium dwellings and 12-space guest parking area

Applications (PA2012-146)



- General Plan Amendment No. GP2012-005
- Coastal Land Use Plan Amendment No. LC2013-001
- Zoning Code Amendment No. CA2012-008
- Site Development Review No. SD2013-001
- Tentative Tract Map No. NT2013-001
- Mitigated Negative Declaration No. ND2013-001

Vicinity Map-Lido Village



Aerial Photograph



08/22/2013

Community Development Department - Planning Division

Oblique Aerial facing East



3303 Via Lido from Via Lido



3303 Via Lido from Via Lido



3355 Via Lido-from Via Lido



08/22/2013

Community Development Department - Planning Division

9

56-space surface parking lot



08/22/2013

Community Development Department - Planning Division

10

3303 Via Lido from Via Malaga

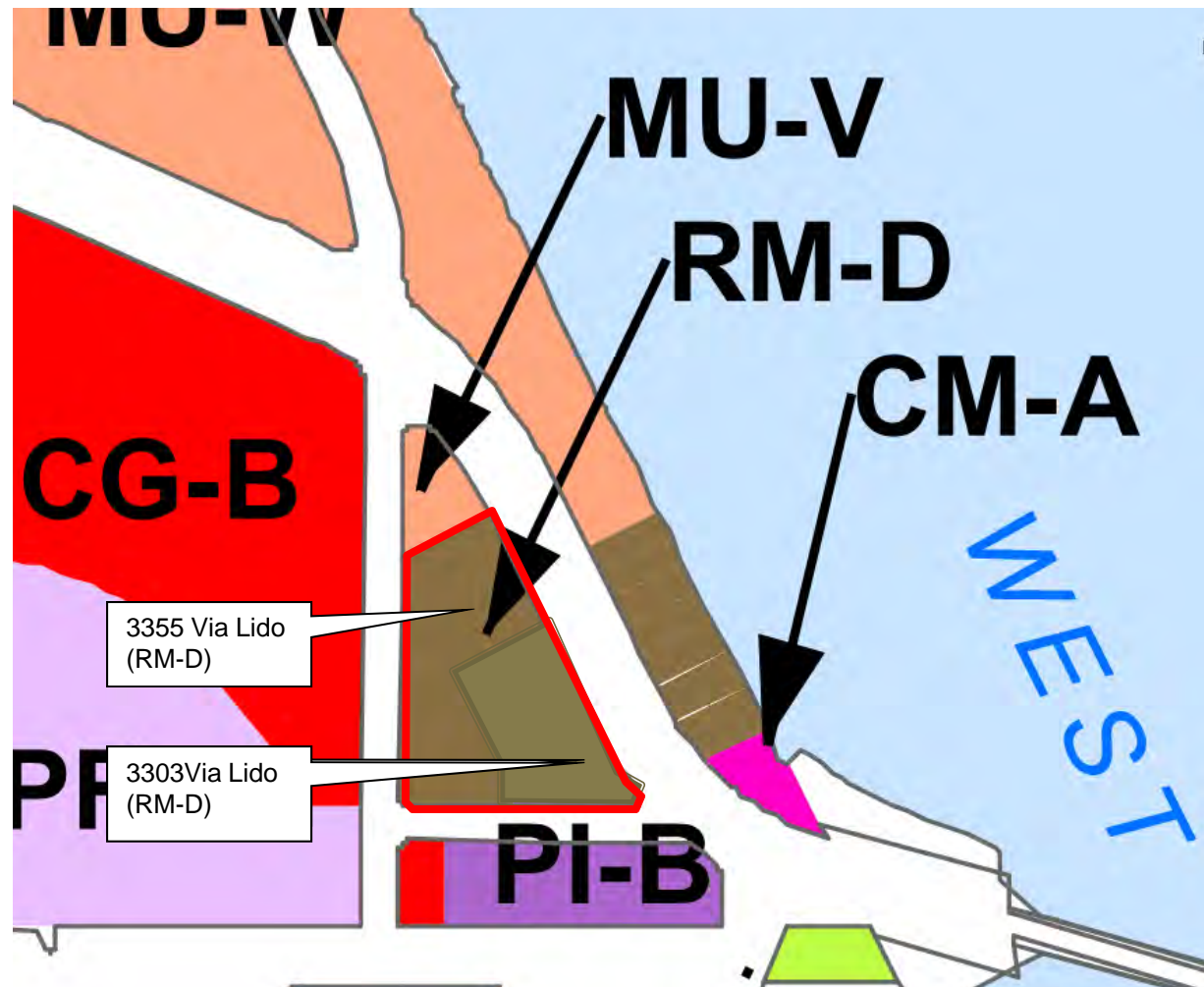


GP Amendment

- Section 423-
Not a major
amendment
- SB-18 Tribal
Notification
is ongoing



CLUP Amendment



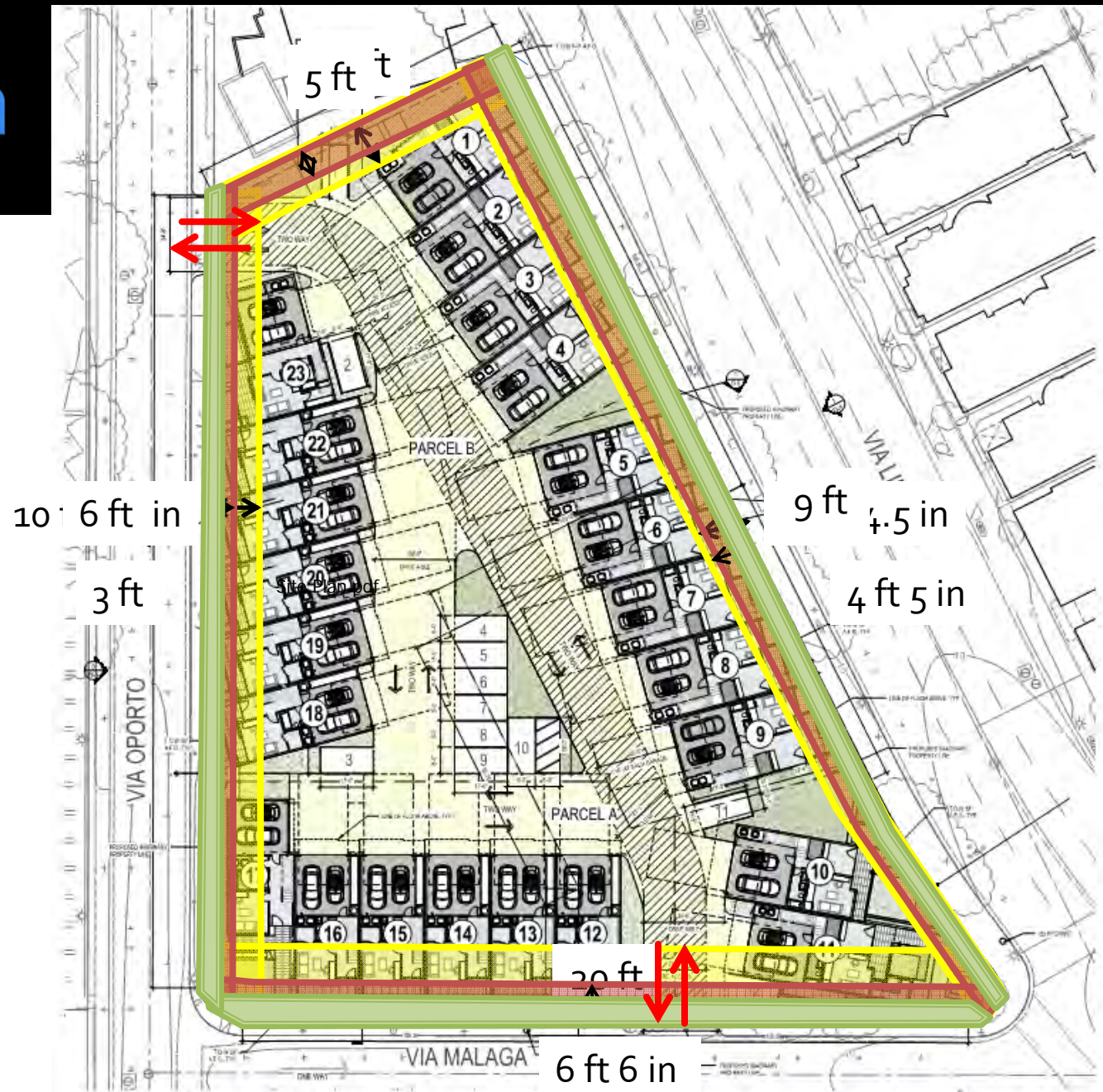
Zoning Amendment



Lido Villas Planned Community

- Establish a planned community with development standards appropriate and compatible with Lido Village.
- Development standards are modeled after the RM Zoning District.
- Variations in height and setbacks are proposed.
- Waiver of 10 acre minimum.

Site Plan



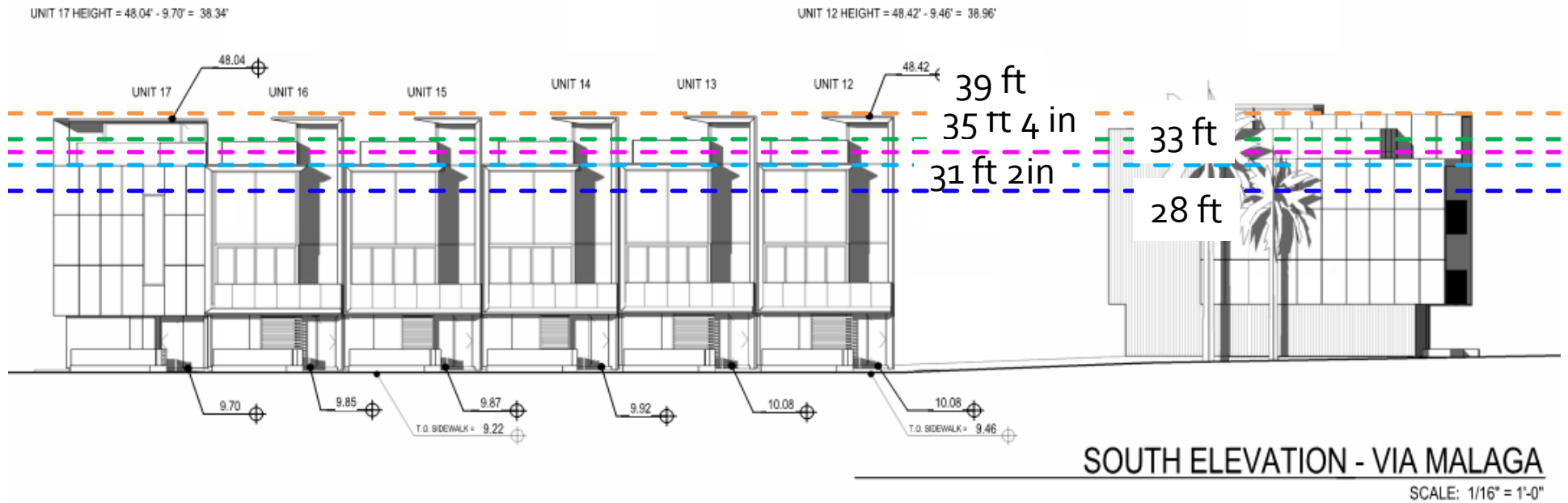
08/22/2013

Community Development Department - Planning Division

(N) SITE PLAN
SCALE: 1/16" = 1'-0"

16

Exterior Elevations-South



Lido Village Design Guidelines

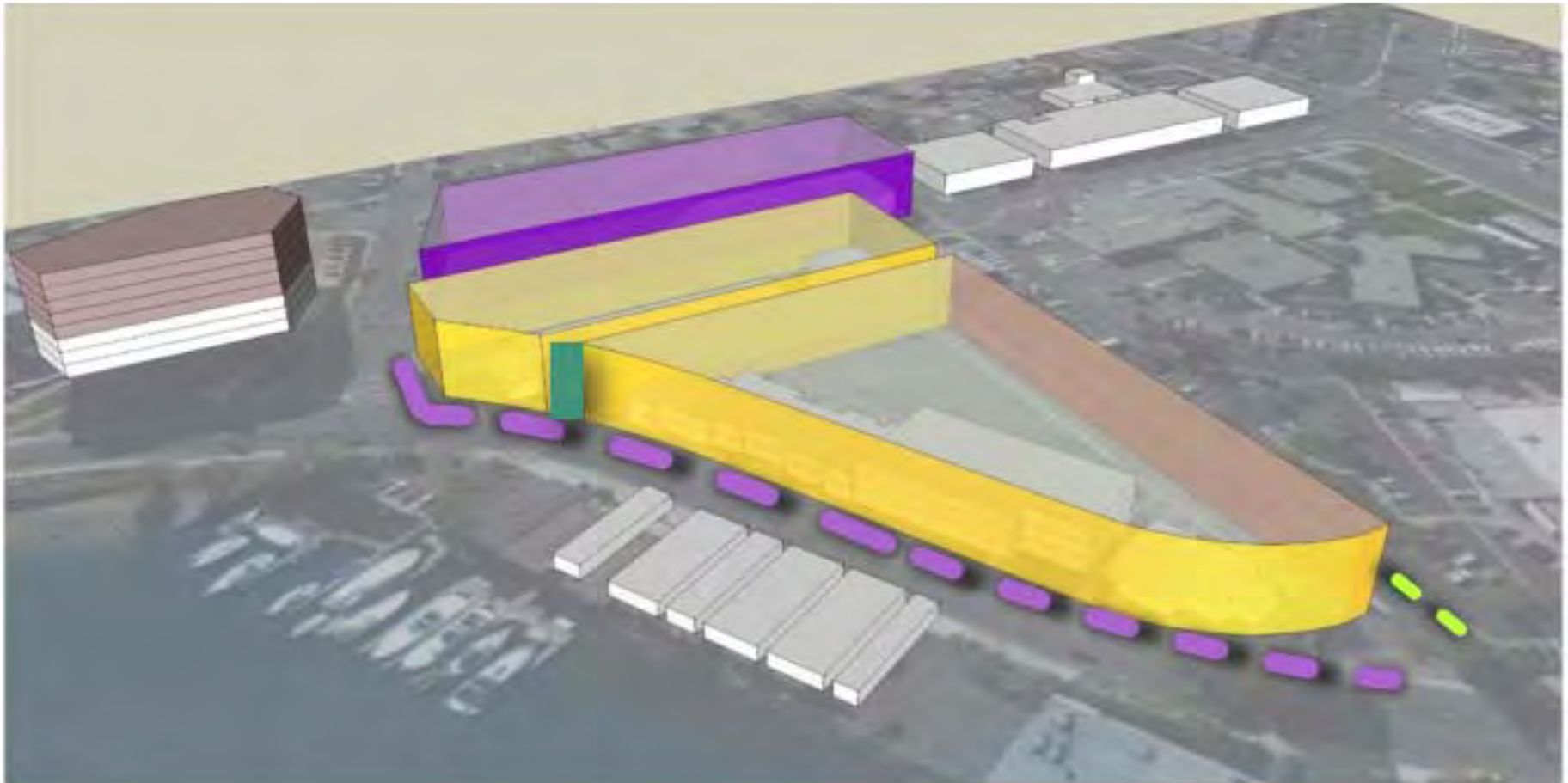


Lido Triangle Goals

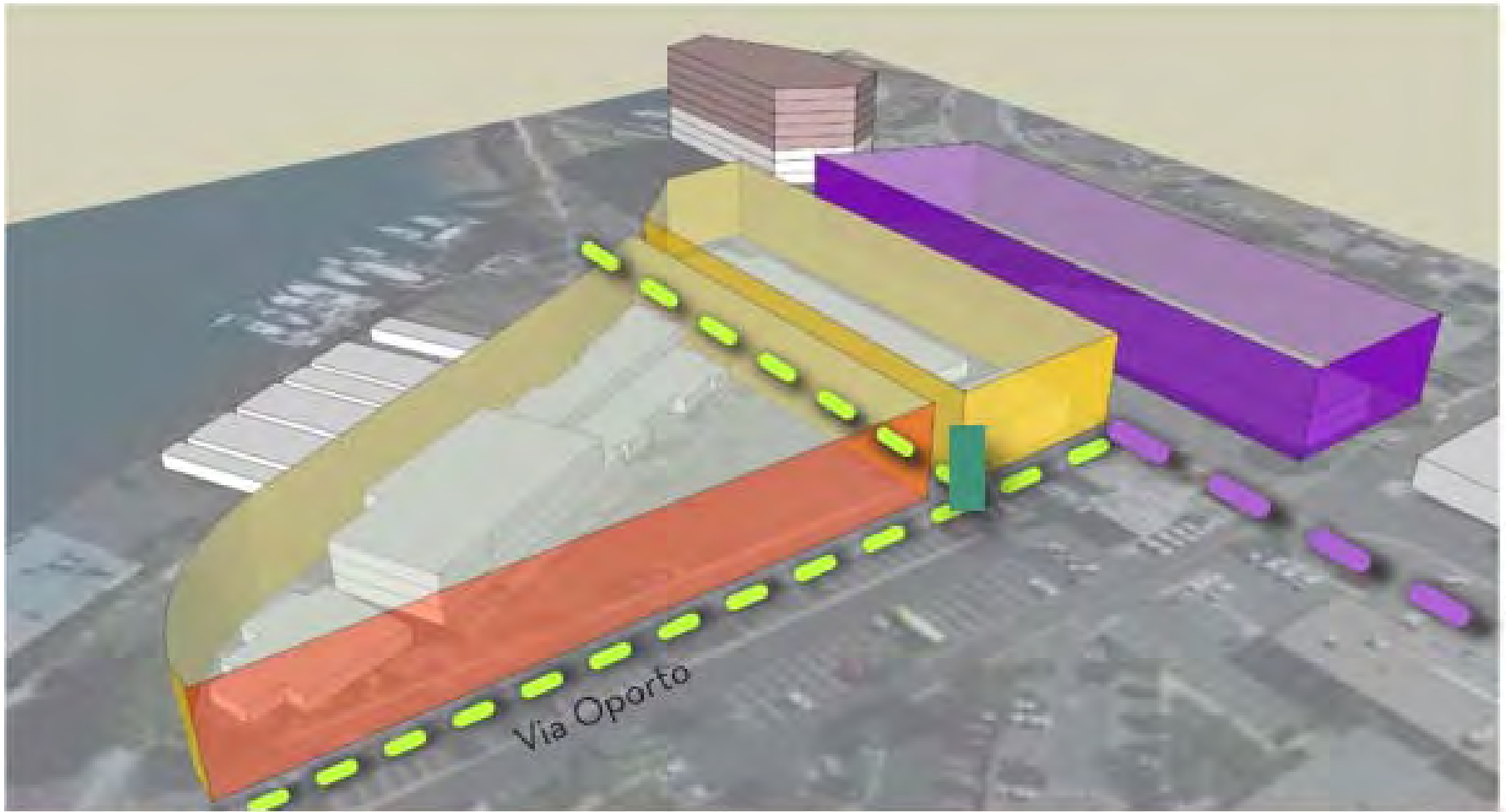


- Improvements should be sensitive to the less-intensive land uses of worship and residential sites.
- Traffic calming devices should be incorporated to promote safe street environments.
- Building and massing should be horizontal to reinforce the pedestrian interface.
- Pursue joint parking opportunities.

Edge Conditions



Edge Conditions



Architectural Themes

- Design Guidelines suggest Coastal or Mediterranean architectural themes or a combination thereof.
- Building materials consist of wood siding, stainless steel panels, and glass railings creating a modern interpretation.
- Guidelines are not standards.

Architecture



08/22/2013

Community Development Department - Planning Division

23

Common Open Space



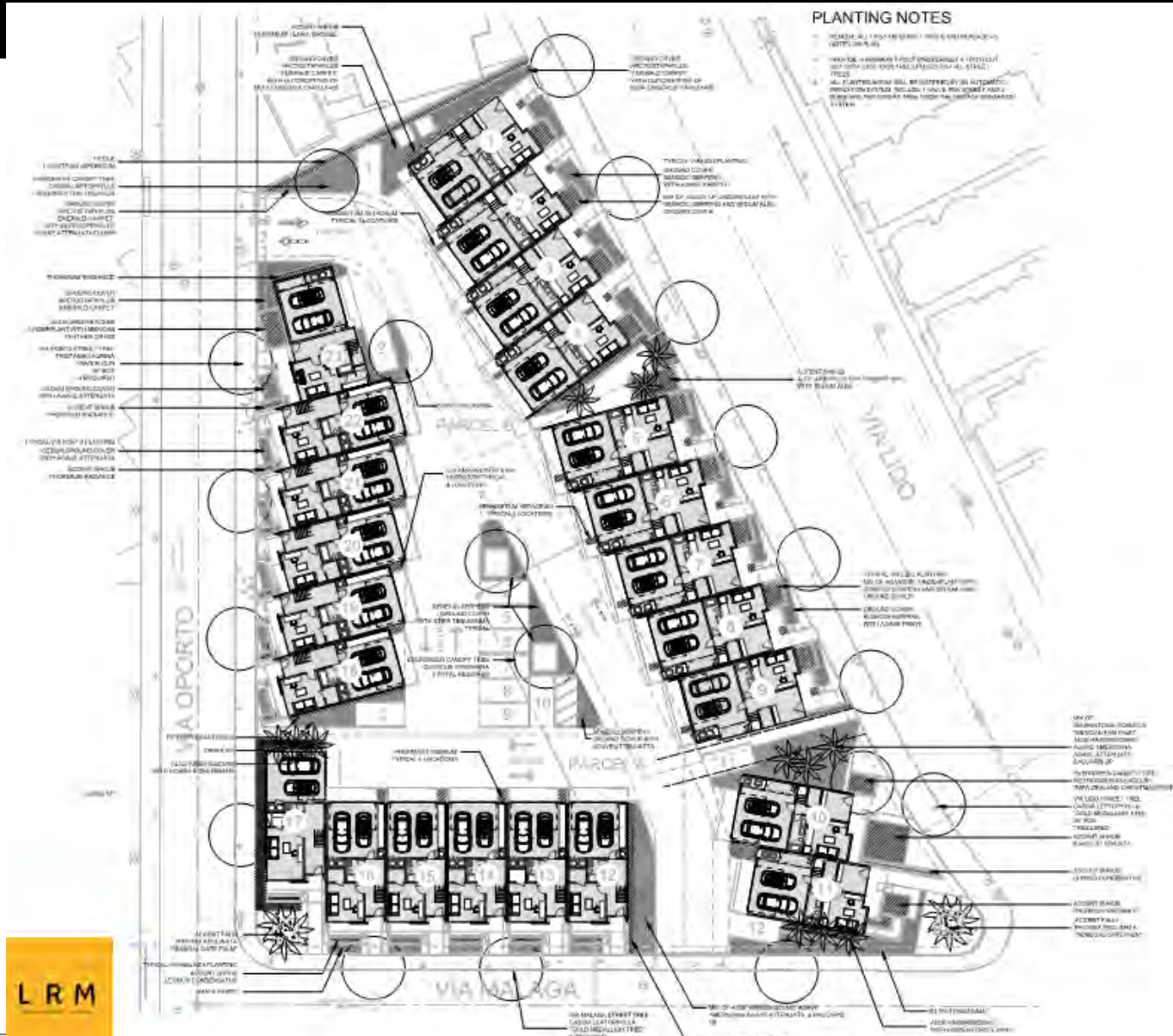
Landscape Area Totals



Landscape/Hardscape



Landscape Plan



Existing Parcel Configuration



Tentative Tract Map



08/22/2013

Community Development Department - Planning Division

CEQA Review



- Mitigated Negative Declaration-ND2013-001
- State Clearing House No. 2013071050
- Public comment period July 12, 2013 through August 13, 2013.
- Mitigation Measures for Air Quality, Cultural Resources, and Hazards and Hazardous Materials are included in the Mitigation Monitoring Program.

Summary



- Land use amendments are compatible with the Lido Village neighborhood (add of 7 units).
- Land use and site design of the project are appropriate. Height and architecture may warrant additional discussion.
- Identify any suggested changes to project design, if appropriate.
- Tentative Council date is November 12, 2013



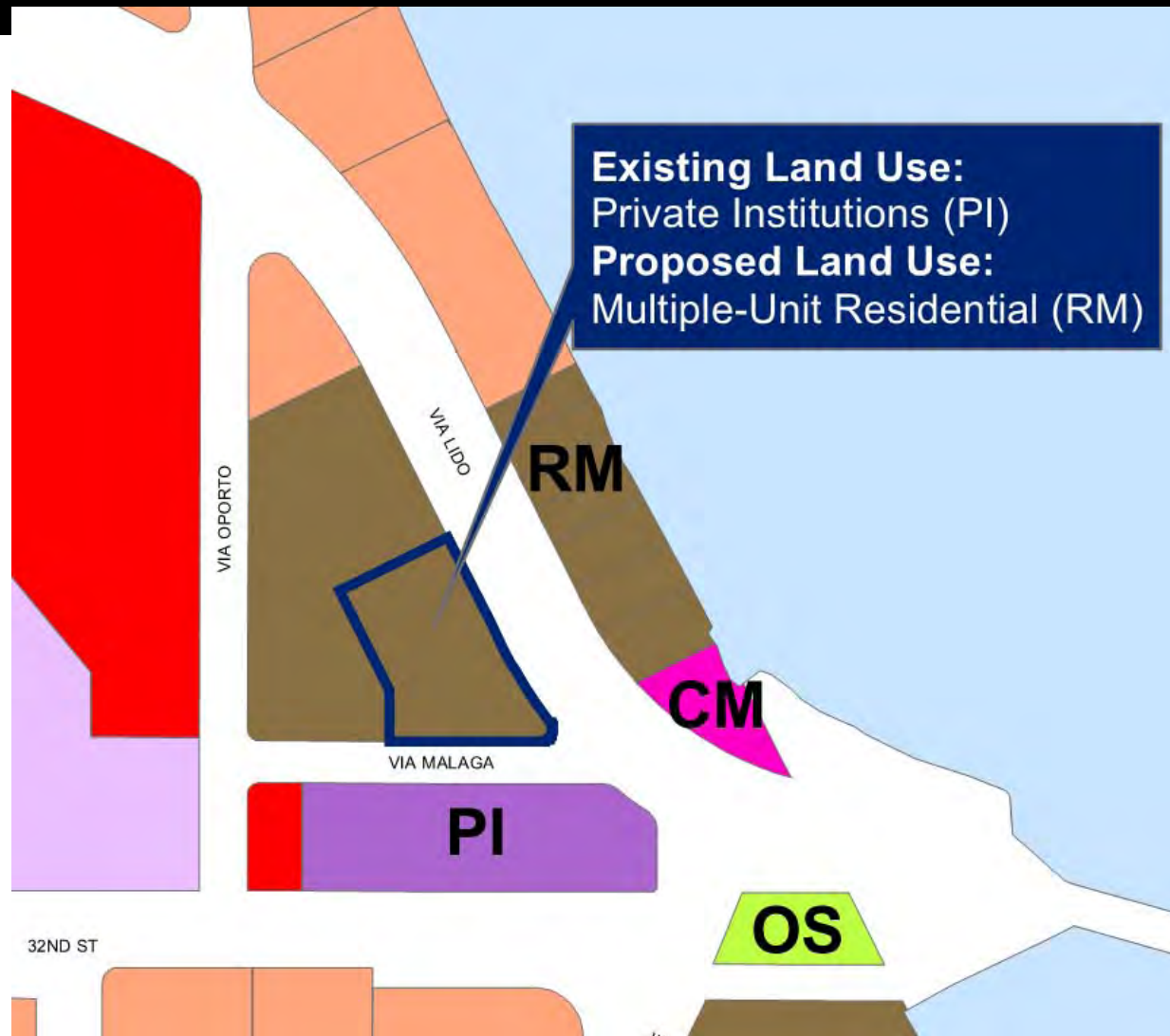
For more information contact:

Makana Nova
949-644-3249
mnova@newportbeachca.gov
www.newportbeachca.gov

Oblique Aerial facing South



GP Amendment



Section 423

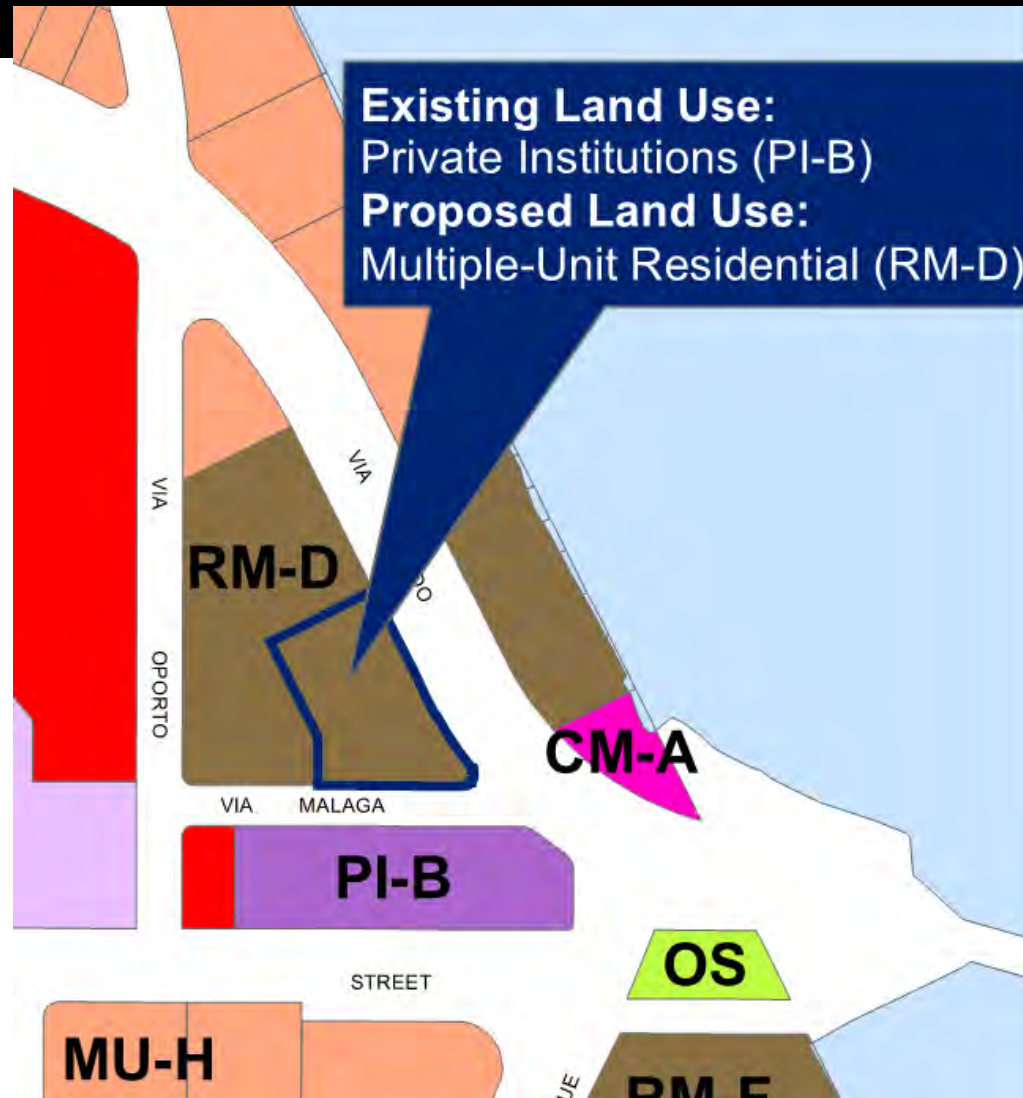


	Increase in Allowed Floor Area	Increase in A.M. Peak Hour Trips	Increase in P.M. Peak Hour Trips	Increase in Allowed Dwelling Units
GP2012-005 (PA2012-146) 3303 Via Lido	0 sq. ft.	0	0	7
Prior Amendments (80%) 1. GP2011-010 (PA2011-209) 2. GP2011-003 (PA2011-024) 3. GP2010-005 (PA2010-052)	16,275	48.63	64.81	2
TOTALS	16,275	48.63	64.81	9
Section 423 Thresholds	40,000 sq. ft.	100	100	100
Vote	No	No	No	No

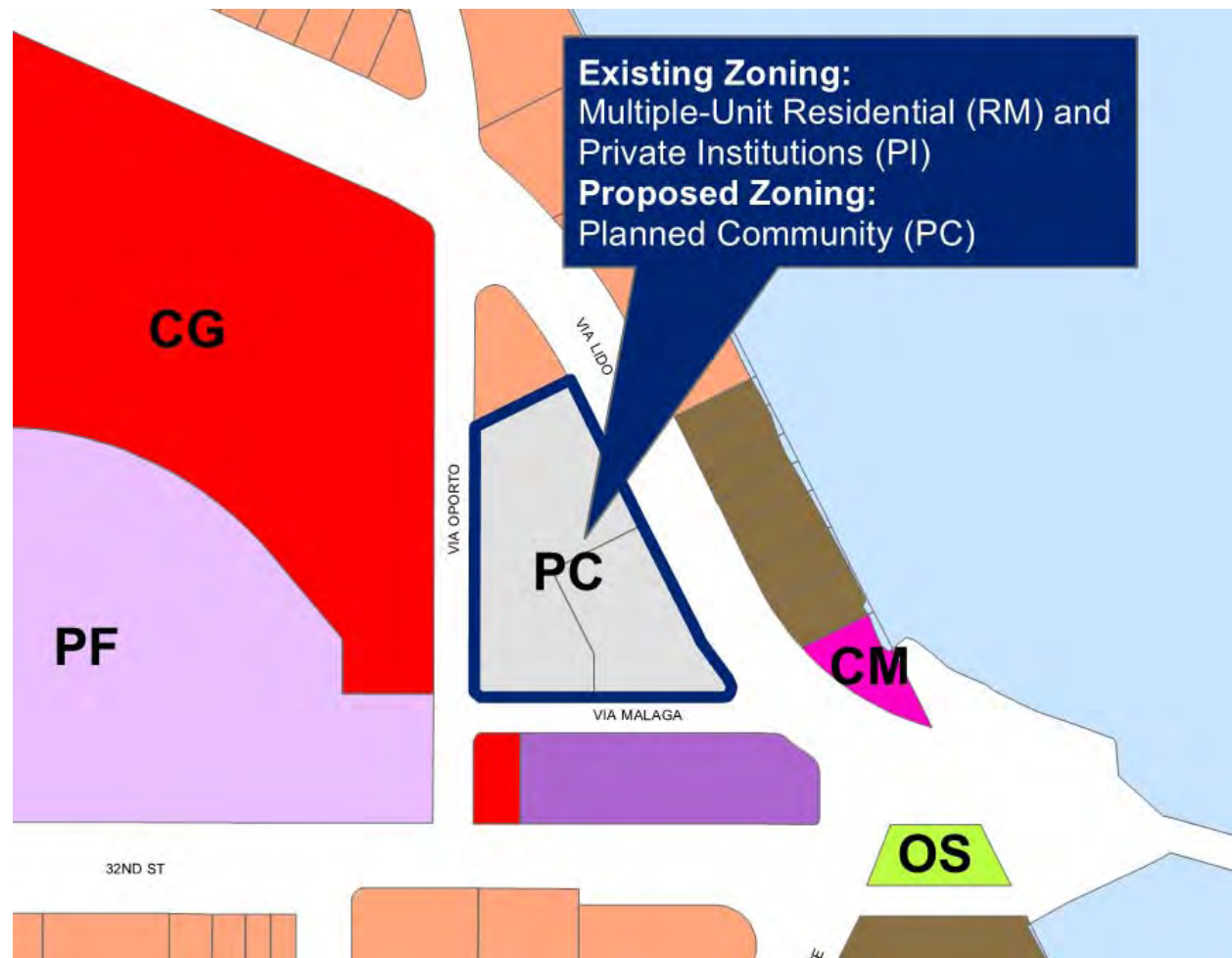
SB-18 Tribal Notification

- NAHC provided a list identifying 14 contacts with the MND
- 90-day consultation period ending November 4, 2013.
- A second round of notices sent August 6th
- A 45-day review period has been requested, which would end September 20th. Staff is awaiting responses from several contacts regarding this request.

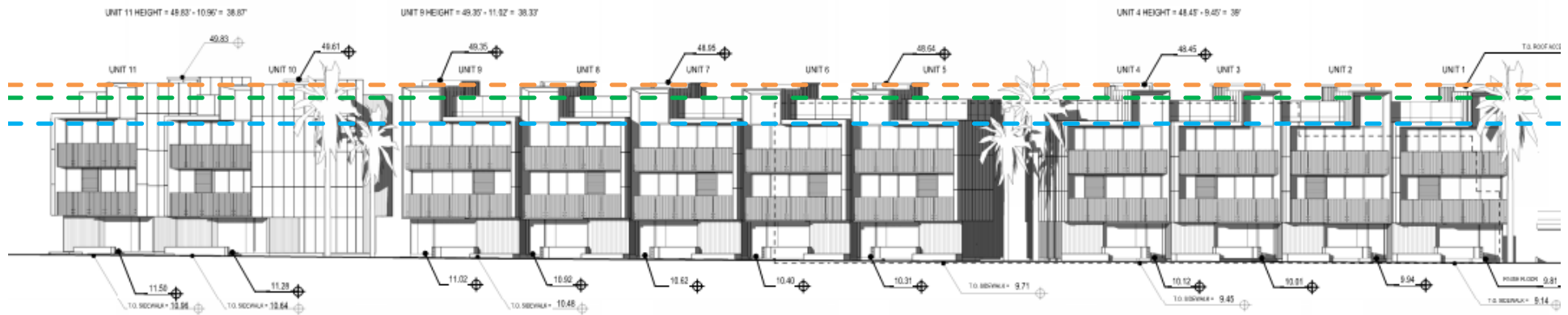
CLUP Amendment



Zoning Amendment

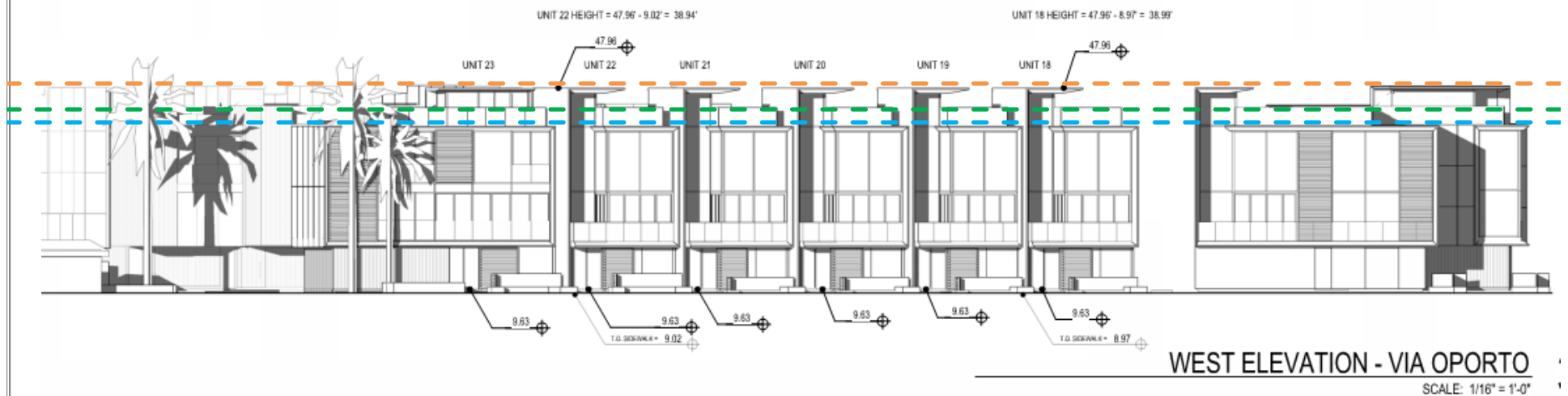


Exterior Elevations-East



EAST ELEVATION - VIA LIDO 1
SCALE: 1/16" = 1'-0"

Exterior Elevations-West



Alternatives

- Continue the item to the September 5th Planning Commission Meeting if additional consideration is necessary.
- If the Planning Commission recommends denial of the application, Staff suggests denying the application without prejudice to allow for an appropriate redesign of the project.

Updates

- One public comment and several agency comments were received in response to the MND.
- Impact Fees
- Requested revisions to conditions can be provided as an updated Exhibit “F” to the draft resolution for approval.
- Covenants, Conditions, and Restrictions
- Tentative Council date is November 12, 2013.

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

September 5, 2013 Meeting
Agenda Item 4

SUBJECT: Newport Harbor Yacht Club - PA2012-091

SITE LOCATION: 720 West Bay Avenue, 800 West Bay Avenue, 711-721 West Bay Avenue, and 710-720 West Balboa Boulevard

- General Plan Amendment No. GP2012-003
- Coastal Land Use Plan Amendment No. LC2012-003
- Zoning Code Amendment No. CA 2012-006
- Minor Use Permit No. UP2012-016
- Planned Development Permit No. PL2012-002

APPLICANT: Newport Harbor Yacht Club

PLANNER: Fern Nueno, Associate Planner
(949) 644-3227, fnueno@newportbeachca.gov

PROJECT SUMMARY

The proposed project consists of the demolition of the 19,234-square-foot yacht club facility and construction of a 23,163-square-foot facility. In order to implement the project, a General Plan Amendment, Coastal Land Use Plan Amendment, Zoning Code Amendment, Minor Use Permit, and Planned Development Permit, would need to be approved to address the yacht club use, square footage increase, additional height, parking, and land use designations for certain properties currently being used for boat storage and parking.

RECOMMENDED ACTION

Remove the item from the calendar.

DISCUSSION

Staff recommends that the item be removed from the calendar in order to provide time for additional analyses. The project will be re-noticed pursuant to the Brown Act and Municipal Code when the future hearing date is identified.

Public Notice

Notice of this review was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject properties at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code.

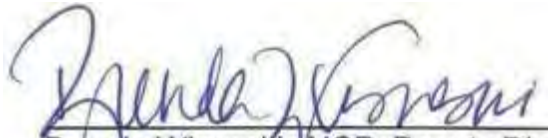
Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website

Prepared by:



Fern Nueno, Associate Planner

Submitted by:



Brenda Wisneski, AICP, Deputy Director

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

September 5, 2013

Agenda Item 5

SUBJECT: Woody's Wharf Use Permit - (PA2011-055)
2318 Newport Boulevard
▪ Conditional Use Permit No. UP2011-010
▪ Variance No. VA2013-006

APPLICANT: Martin Potts, MPA, Inc., on behalf of Woody's Wharf Restaurant

PLANNER: Brenda Wisneski, AICP, Deputy Community Development Director
(949) 644-3297, bwisneski@newportbeachca.gov

PROJECT SUMMARY

Reconsideration of an application to amend a use permit to change the operational characteristics of an existing restaurant. The requested amendment includes: 1) the introduction of patron dancing; 2) extending the opening hour from 11:00 a.m. to 10:00 a.m. and the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.; 3) amending the requirement for full-time valet parking service during restaurant operating hours; and 4) waiving up to 6 parking spaces resulting from increased occupancy created by patron dancing and the elimination of valet parking service. A variance is also requested to allow a proposed patio cover to encroach into the required bulkhead setback.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. _____ approving Conditional Use Permit No. UP2011-010 and Variance No. VA2013-006 (Attachment No. PC 1), to:
 - 1) allow the proposed patio cover to encroach into the bulkhead setback;
 - 2) extend the opening hour of the restaurant and outdoor dining area to 10:00 a.m., daily, and extend the closing hour of the outdoor dining area to 2:00 a.m., daily;
 - 3) require the use of the valet parking on an as-needed basis only; and
 - 4) waiver of a portion of the required parking.

But denying the request to allow changes to the restaurant operation and use of the outdoor dining area, that include:

- 1) the introduction of patron dancing within the interior of the restaurant; and
- 2) removing tables and chairs within the outdoor dining area.



LOCATION	GENERAL PLAN and COASTAL LAND USE PLAN	ZONING	CURRENT USE
ON-SITE	MU-W2 (Mixed-Use Water Related)	MU-W2 (Mixed-Use Water Related)	Woody's Wharf Restaurant
NORTH and SOUTH	MU-W2 and MU-W (Mixed-Use Water Related)	MU-W2 (Mixed-Use Water Related)	Restaurant, with Commercial and Residential Uses Beyond To the South - Commercial Buildings (Vacant)
EAST	The Rhine Channel and CM (Marine Comm) and RM (Multi-Unit Residential)	The Rhine Channel and CM (Marine Commercial) and RM (Multi-Unit Residential)	The Rhine and Lido Peninsula Beyond
WEST	Public Right-of-Way with Municipal Parking Lot and R-1 (Single-Unit Residential)	Municipal Parking Lot and R-1 (Single-Unit Residential) beyond	Municipal Parking lots and Residential Uses Beyond

INTRODUCTION

Project Setting

The restaurant is located on the east side of Newport Boulevard between 24th and 26th Streets overlooking the Rhine Channel. The property is comprised of three lots with a total area of approximately 13,260 square feet, with a commercial building which crosses the interior property lines. The restaurant has been in operation since 1965 and offers live entertainment. The restaurant building measures approximately 3,305 square feet with 1,173 square feet of interior dining area and a 709 square foot outdoor dining area. There are 26 on-site parking spaces (6 spaces are tandem in accordance with the valet parking plan). The site plan and floor plans are depicted in Attachment PC7. The project provides dock space for approximately eight (8) boats on the Rhine Channel, available for patrons who choose to take a boat to the restaurant.

Background

The subject use permit amendment was partially approved by the Planning Commission on November 8, 2012. The applicant appealed the decision to the City Council. However, before the appeal could be considered, the applicant stated the intent to modify the application to include a patio cover to address concerns related to noise. The proposed cover would require a variance to allow it to encroach into the bulkhead setback. Because application was modified, on March 12, 2013 the City Council requested the Planning Commission reconsider the application.

The applicant's original use permit application requested changes to the operation of the restaurant to include:

- 1) the introduction of patron dancing within the interior of the restaurant;
- 2) removing tables and chairs within the restaurant and the outdoor dining area on an as-needed basis;
- 3) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily;
- 4) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m., daily;
- 5) the use of the valet parking on an as-needed basis; and
- 6) waiver of a portion of the required parking.

On November 8, 2012, the Planning Commission, approved a portion of the original request which included:

- 1) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily;
- 2) extending the closing hour of the outdoor dining area from 11:00 p.m. to Midnight on Friday and Saturday nights;
- 3) the use of the valet parking on an as-needed basis; and
- 4) waiver of a portion of the required parking.

The portion of the application that was denied included:

- 1) the introduction of patron dancing within the interior of the restaurant;
- 2) removing tables and chairs within the outdoor dining area; and
- 3) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.

The approved resolution, staff report and minutes related to the November 8, 2012 hearing are provided as Attachments PC 4. That staff report provides detailed entitlement history and related background. The attachments to the November 8, 2012 staff report can be accessed on the City's website at <http://www.newportbeachca.gov/index.aspx?page=1328>.

The applicant's letter of justification appealing the Planning Commission's decision is provided as Attachment PC 3. The appeal raises issues related to dancing, hours of operation of the outdoor dining area, proposed changes to conditions of approval approved by the Planning Commission, and noise, as items that need further discussion and consideration.

Project Description

The applicant maintains its original request to amend the use permit, but has modified the application to construct a patio cover on the rear patio. A variance is required because for patio cover to encroach 10-feet into the 10-foot bulkhead setback. A canvas canopy is currently used during the wintertime. The proposed canopy would be a permanent installation and would include retractable panels. As shown in the proposed plans provided as Attachment PC 8, the features of the canopy include multi-layer polycarbonate canopy panels and laminated glass windscreen which would be extended to the bottom of the canopy.

DISCUSSION

The request for the patio cover and its potential to mitigate noise is the only condition which has changed since the Planning Commission's action on November 8, 2012. Therefore, the recommended action is consistent with the Planning Commission's November 2012 decision with the exception of the patio area. The applicant has modified its proposal which affects the outside patio, therefore reconsideration of the requested hours of operation is warranted.

Analysis

General Plan/CLUP/Zoning

The Land Use Element of the General Plan and the Coastal Land Use Plan (CLUP) designate the site and the adjacent properties as Mixed Use- Water Related (MU-W2 and MU-W, respectively). The project is consistent with this designation as eating and drinking establishments are visitor-serving and commercial uses. Furthermore, Land

Use Policy LU 6.19.2 (Bay Fronting Properties) encourages marine-related and visitor-serving retail, restaurant, hotel, institutional, and recreational uses, with some allowance for residential uses. The existing eating and drinking establishment is located in MU-W2 (Mixed-Use Water Related) Zoning District and is consistent with the land uses intended for properties fronting Newport Boulevard within McFadden Square/Cannery Village neighborhood.

Noise Analysis

A noise measurement survey was conducted by an acoustical engineer represented by the applicant on Friday, December 21, 2012. Six locations in the area surrounding the subject business were monitored in the late evening hours when the area was active and the outdoor patio appeared to be "at capacity". This survey was reviewed and additional noise measurements were conducted by an acoustical engineering retained by the City to confirm the accuracy of the conclusions. The City's survey was conducted on Friday, July 19, 2103, also when the area was active and the patio was fully occupied. Both studies are provided at Attachment PC 6.

Both studies provided similar conclusions which are summarized below:

1. Noise levels along Newport Boulevard and adjacent residences can be loud, sometimes in the upper 60 dBA range.
2. Noise levels at the mixed-use development can exceed the nighttime noise standard of 50 dBA, but the sources of noise are pedestrians, dock activity, traffic, and other businesses. The noise sources were not attributed to Woody's.
3. Woody's noise did not contribute to the total noise environment, therefore noise from Woody's had to be less than 50 dBA (Leq).
4. The proposed patio structure would significantly reduce noise from the patio area.
5. Operation of the outdoor patio will remain below the Noise ordinance criteria at the mixed use developments to the north and south.

The noise studies were conducted during different times of the year which confirmed that noise levels in the area exceed the noise standard when pedestrian and harbor activity is high and surrounding businesses are at full capacity. Both studies also confirm that a variety of noise sources contribute to the loud environment. During the monitoring periods, it was determined that Woody's was not the cause of the noise levels.

Outdoor Patio

The existing Use Permit does not specify hours of operation for the restaurant, however, the 2:00 a.m. closing hour is currently regulated by the Department of Alcoholic Beverage Control (ABC). The Outdoor Dining Permit, however, limits use the outdoor patio to 11:00 p.m. The applicant requests to extend the hours of the outdoor dining area from 11:00 p.m. to 2:00 a.m., daily.

The outdoor dining area is located outside of the main dining room and measures 709 square feet. The approved outdoor dining area plans show tables and seating for 66 persons. The removal of a portion of the tables and chairs as proposed will provide standing area for patrons of approximately 400 square feet and will result in an increase in the number of patrons that will occupy the space. The increase in the number of patrons will increase ambient noise levels of patio area and increase the number of patrons and employees entering and exiting the building.

It was determined by the Planning Commission at its November 8, 2013 meeting that extending closing hour and increasing the occupancy of the outdoor dining area would adversely impact the neighboring properties and residential occupants that have raised objections and complaints. Therefore, the Planning Commission's action maintained closing the outdoor dining area at 11:00 p.m., but allowing use of the patio until midnight on Friday and Saturday nights.

Pursuant to Section 20.48.090 of the Zoning Code, the Planning Commission must consider the following potential impacts upon adjacent or nearby uses when reviewing an application to allow late-hour operations and outdoor dining:

1. *Noise from music, dancing, and voices associated with allowed outdoor uses and activities;*
2. *High levels of lighting and illumination;*
3. *Increased pedestrian and vehicular traffic activity during late and early morning hours;*
4. *Increased trash and recycling collection activities;*
5. *Occupancy loads of the use; and*
6. *Any other factors that may affect adjacent or nearby uses.*

The noise surveys indicate the current use of the outdoor patio does not contribute to the noise levels in the surrounding area, nor at the adjacent mixed use developments to the north and south. The acoustical engineers also confirm the proposed patio cover would significantly reduce the noise emitted from the patio. Regardless of the noise study results, complaints from local residents stating that the patio is a significant noise source should also be considered. Therefore, it recommended that the patio cover be constructed and if it is demonstrated that the noise levels generated from the use of the patio are reduced to acceptable levels, then extending the hours to 2:00 a.m. would be acceptable. Conditions of approval 27 and 28 require verification of the patio cover's effectiveness.

The proposed use will not necessitate high levels of lighting or illumination and any outdoor lighting must conform to Zoning Code Section 20.30.070 (Outdoor Lighting). A temporary increase in traffic during late and early morning hours on weekends is expected along Newport Boulevard; however, this portion of roadway is not a major residential road, so disturbances to residents related to traffic are not expected to occur.

An amendment to the Use Permit requires the applicant to obtain an Operator License from the Police Department. The Operator License should provide for enhanced control

of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment, and will provide the Police Department with a means to modify, suspend, or revoke the operator's ability to maintain late-hour operations. Many of the conditions that will be included in the Operator's License will be the same conditions imposed by the use permit. The Operator's License is a tool that the Police Department can utilize to enforce the conditions of approval of the use permit.

Variance Findings

The existing building and outdoor patio are located at the existing bulkhead, while the Zoning Code requires a 10-foot setback. Therefore, the patio cover would also be required to encroach into the setback. Section 20.52.090.F (Variances, Findings and Decision) of the Zoning Code requires the Planning Commission to make the following findings before approving a variance:

- A. There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;*
- B. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification;*
- C. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;*
- D. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;*
- E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood; and*
- F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

The objective of the application is to construct a cover on the existing patio. The layout of the existing structure and patio necessitate locating the cover within the setback area. The patio is 30-feet deep. If the patio cover maintained the required 10-foot setback, only 20-feet of the patio would be covered which would not be sufficient to reduce noise levels. The structure to the north is also located at the bulkhead, as depicted in the site photos provided as Attachment PC 7. Since the cover would be located over an existing patio it would not be consistent with the setback of the patio, as well as the existing building.

Summary

As stated above and in correspondences, the restaurant operation has generated a significant amount of complaints related to noise. The applicant proposes a patio cover which will reduce the noise generated by patrons on the outdoor patio, as indicated by two acoustical engineers. Maintaining no more than 66 seats in the outdoor dining area and requiring all doors and windows to be closed should also limit the noise. Therefore, allowing the outdoor area to be occupied to 2:00 a.m., consistent with the hours of the indoor area, is recommended.

Staff recommends Planning Commission adopt the draft resolution approving Use Permit No. UP2011-010 (PA2011-055) and Variance No. VA2013-006, to allow:

- 1) the proposed patio cover to encroach into the bulkhead setback;
- 2) extend the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily, and extend the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m., daily;
- 3) the use of the valet parking on an as-needed basis; and
- 4) waiver of a portion of the required parking.

But denying the request to allow changes to the restaurant operation and use of the outdoor dining area, that include:

- 1) the introduction of patron dancing within the interior of the restaurant; and
- 2) removing tables and chairs within the outdoor dining area.

Alternatives

Potential alternatives actions the Planning Commission may be consider include, but are not limited to:

1. Maintain action approved on November 8, 2012 and deny the variance (see draft resolution Attachment PC 2;
2. Modify the recommended action to change the business operations; or
3. Continue the public to allow the applicant additional time to resolve issues that have been raised at the public hearing.

Environmental Review

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code.

Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Submitted by:



Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution for Approval
- PC 2 Draft Resolution to Approve UP but Deny Variance
- PC 3 Applicant's Correspondences
- PC 4 PC Resolution, staff report and minutes, dated November 8, 2012
- PC 5 Police Department Recommendation and Alcohol Related Statistics
- PC 6 Noise Studies
- PC 7 Site Photos
- PC 8 Project Plans- Site Plan, Floor Plan and Patio Cover

Attachment No. PC 1

Draft Resolution for Approval

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2011-01 AND VARIANCE NO. VA2013-006 TO MODIFY VALET SERVICE, OPENING HOURS, CLOSING HOUR OF THE OUTDOOR DINING AREA, WAIVER OF SIX PARKING SPACES, AND ALLOW A PATIO COVER TO ENCROACH INTO THE BULKHEAD SETBACK; BUT DENY A CHANGE TO OUTDOOR SEATING PLAN AND THE ADDITION OF PATRON DANCING; AND SUPERSEDING USE PERMIT NO. 3065 AND OUTDOOR DINING PERMIT NO. 1 AT AN EATING AND DRINKING ESTABLISHMENT LOCATED AT 2318 NEWPORT BOULEVARD (PA2011-055).

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Martin Potts on behalf of the Woody's Wharf Restaurant, with respect to the property located at 2318 Newport Boulevard, and legally described as Lots 6, 7, and 8, Section A Newport Beach, Block 223, requesting to amend the existing use permit to change the operational characteristics of an existing restaurant.
2. An application requesting the following changes in the operational characteristics of the existing restaurant: 1) to extend the opening hour from 11:00 a.m. to 10:00 a.m., daily; extend the closing hour of the existing outdoor dining area from 11:00 p.m. to 2:00 a.m., daily; 2) to accommodate patron dancing in the interior of the restaurant, nightly; 3) to amend the requirement for full-time valet parking service during restaurant operating hours, to only require valet services on an as-needed basis (to accommodate special events and holiday peak use); and 4) to approve a waiver of up to 6 parking spaces that results from the addition of patron dancing and eliminating valet parking service on a full time basis. The application will also eliminate conditions of approval that are duplicative and/or otherwise outdated, as requested by the applicant.
3. On July 11, 2013 an application was submitted to request a variance to construct a patio cover on the existing patio which would encroach into the bulkhead setback.
4. The subject property is located within the Mixed Use – Water Related Zoning District (MU-W2) and the General Plan Land Use Element category is also Mixed Use – Water Related District (MU-W2).
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use – Water Related District (MU-W).
6. The increased occupancy of the outdoor dining area caused by the removal of tables and chairs, as proposed, without the introduction of any noise mitigating apparatus or construction is anticipated to result in increased noise levels that will adversely impact nearby properties and residential occupants.

7. The extension of the closing hour for the outdoor dining area to 2:00 a.m. in conjunction with the increased occupancy of the main dining room and the outdoor dining area, as proposed, is anticipated to result in noise levels that promotes a change in the operational characteristics that results in a change from restaurant to a bar/nightclub that will adversely impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.
8. The current parking requirement is one (1) parking space for every 40 square feet of net public area. The net public area proposed is 1,589 square feet; therefore the parking requirement is 40 spaces. There are 26 spaces on-site (with 6 tandem spaces available only with the valet parking service) and 10 spaces annual in-lieu spaces, and a credit of 4 spaces for the boat docks is granted, for a total 40 parking spaces allocated to the use.
9. The removal of tables and chairs within the main dining room to accommodate patron dancing will result in a change in operational characteristics of the restaurant converting the use to a bar/nightclub, which is not compatible with the surrounding properties or uses, and will be detrimental to the general welfare of the residential occupants in the neighborhood.
10. There is no previous approval for patron dancing in conjunction with the existing restaurant use, and therefore there is no basis or entitlement for the continued use of patron dancing or to allow for the introduction to the existing restaurant use.
11. In accordance with the Newport Beach Municipal Code, on November 8, 2012 the Planning Commission conducted a public hearing and approved: 1) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily; 2) extending the closing hour of the outdoor dining area from 11:00 p.m. to Midnight on Friday and Saturday nights; 3) the use of the valet parking on an as-needed basis; and 4) waiver of a portion of the required parking. The portion of the application that was denied included: 1) the introduction of patron dancing within the interior of the restaurant; 2) removing tables and chairs within the outdoor dining area; and 3) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.
12. On November 26, 2012, the project applicant filed an application and letter of justification appealing the Planning Commission's decision. The City Council considered the appeal at a public hearing on March 12, 2013 and requested the Planning Commission reconsider the item on the basis that the applicant modified the application following the Planning Commission's decision.
13. A public hearing was held on September 5, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1- Existing Facilities.

2. This exemption applies to existing facilities where it can be demonstrated the project involves negligible or no expansion of the existing use. The change in hours of operation or addition of patron dancing does not involve an expansion or intensification of the existing use. Additionally, the change in the provision of valet parking services on an as-needed basis is consistent with the previous restaurant operations prior to acquisition by the current applicant.

SECTION 3. REQUIRED FINDINGS – USE PERMIT.

In accordance with Sections 20.48.030 (Alcohol Sales) and 20.52.020 (Conditional Use Permit) of the Newport Beach Municipal Code, the following finding and facts in support of such finding is set forth:

Finding:

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support Finding:

- A-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcoholic beverages is intended for the convenience of customers of the restaurant. Operational conditions of approval recommended by the Newport Beach Police Department (NBPD) relative to the sale of alcoholic beverages will ensure compatibility with the surrounding use and minimize alcohol-related impacts.
- A-2. Pursuant to Chapter 5.25 of the NBMC, the operator, as well as any future operators, is has been conditioned to require that the applicant, as well as any future operators, to obtain an Operator License to ensure the establishment is operated in a safe manner and compatible with the neighborhood.
- A-3. The subject property is located within a mixed use district developed primarily with commercial uses. Across the Rhine Channel, the closest residential district is approximately 570 feet away. To the north, the closest residential use is approximately 200 feet away and residential uses associated with the future South Coast Shipyard Project will be approximately 100 feet away. To the west, the nearest residential uses are 230 feet away; and to the north the nearest residential uses are approximately 200 feet away. The nearest park is the public beach adjacent to the West Ocean Front Boardwalk over 650 feet from the subject property. There are no day care centers, recreation facilities, places of religious assembly, or schools in close proximity to the subject property.

In accordance with Section 20.52.020 of the Zoning Code, eating and drinking establishments classified as “Food Service, Late Hours” require the approval of a conditional use permit within the Mixed-Use Water Related (MU-W2) Zoning District. In accordance with Section 20.52.020.F of the Zoning Code, the following findings and facts in support of such findings are set forth:

Finding:

B. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

B-1. The Mixed-Use Water Related (MU-W2 and MU-W) land use designations of the General Plan and Coastal Land Use Plan are intended to encourage water related uses intermixed with general commercial, visitor-serving commercial and residential uses. The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of this land use designation.

B-2. Food service uses are expected to be located in commercial areas, and are complementary to the existing commercial and residential uses in the area. Such uses are frequented by visitors, tenants of the nearby commercial uses, and residents alike.

B-3. The subject property is not part of a specific plan area.

Finding:

C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

C-1. The subject property is located in the Mixed Use – Water Related Zoning District (MU-W2), and eating and drinking establishments classified as "Food Service, Late Hours" require the approval of a conditional use permit.

C-2. As conditioned, the project will comply with Zoning Code standards for eating and drinking establishments. Conditions are included related to on-sale alcoholic beverage activities, including the training of personnel, and the provision of security personnel while live entertainment is offered.

C-3. Pursuant to Chapter 5.25 of the NBMC, the project has been conditioned to require the applicant, and any future operator of the eating and drinking establishment, to obtain an Operator License from the Newport Beach Police Department (NBPD) in order to maintain operating hours beyond 11:00 p.m.

C-4. As conditioned, the proposed patio cover shall be constructed in accordance with the submitted plans and tested to confirm the expected noise reduction is provided prior to use of the outdoor patio beyond 11:00 p.m.

Finding:

D. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

- D-1. The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses.
- D-2. As conditioned, the approved seating plan shall be maintained on the basis that the removal of table and chairs from the outdoor dining area increases the number of patrons in this area and likely to result in increased noise levels that will adversely impact nearby properties and residential occupants.
- D-3. The dancing activities are anticipated to result in an increase in the number patrons entering and exiting the building and thereby exposing the increased noise levels of the interior and the noise generated by the live entertainment and/or dancing to the surrounding area.
- D-4. The existing outdoor dining patio is surrounded by glass walls which aid to minimize noise from emanating from this area, but are not adequately effective in controlling noise as evidenced by noise complaints received by the Police Department and the correspondence received.
- D-5. The effectiveness of the proposed patio cover has been evaluated by two acoustical engineers who indicate it will significantly reduce the noise levels from the patio area.
- D-6. Construction of the proposed patio cover will significantly reduce noise from the patio area to levels well below the Noise Ordinance criteria at the existing mixed use residences to the north and the future residences to the south. Therefore, extending the closing hour to 2:00 a.m. will not adversely impact nearby properties and residential occupants into the late night hours, and is a compatible activity for the neighborhood.
- D-7. In order to further reduce the potential impact on neighboring properties, a condition of approval is required to prohibit recorded music or other types of sound amplification within the outdoor dining area at all times. Additionally, conditions of approval require the doors exiting the building to the outdoor dining area to remain closed whenever live entertainment is performed inside the building, except in the case when persons are entering and exiting the building.
- D-8. The location of the valet parking pick-up and drop-off area is shielded from the residences by the restaurant building, thereby mitigating noise impacts from this activity to residential uses across and along the Rhine Channel.
- D-9. Adequate number of parking spaces are available on-site and the valet parking service serving the nighttime operation will prevent traffic backing up onto Newport Boulevard. The waiver of a portion of the on-site parking caused by the elimination of the valet parking service during daytime hours of the operation is offset by the lower parking demand for the use based upon on-site observations and the availability of the municipal parking lots in the vicinity. The use of the valet parking service when live entertainment occurs and on an as-

needed basis in the evening will maximize on-site utilization of the parking lot and in the case that the lot is full, parking is available in the municipal metered parking lot across the street (the meters are not in effect after 6:00 p.m. daily). Therefore, the waiver of 6 parking spaces for the daytime and nighttime operational periods as proposed is reasonable in this particular case.

Finding:

E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

- E-1. This is an eating and drinking establishment that has existed in this location since the 1960's. The project site has proven to be physically suitable in size to accommodate the restaurant use.
- E-2. The project site is located on Newport Bay between 24th and 26th Street overlooking the Rhine Channel and is surrounded by similar commercial uses located to the north (next door), and the northwest of the use. This is an appropriate location for an eating and drinking establishment. The restaurant use is complementary to the existing commercial uses in the area, as well as convenient to serve the residential uses located to the north and east across the Rhine Channel in relation to the project site.
- E-3. The Traffic Engineer has previously reviewed the configuration of the parking lot, as well as the valet parking plan, and has determined the parking lot design functions safely and does not prevent emergency vehicle access to the establishment.
- E-4. The site is currently served by public services and utilities.

Finding:

F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

- F-1. The project has been reviewed and appropriately conditioned to ensure the continued operation of the existing eating and drinking establishment as a restaurant, and not as a bar/nightclub, will not be detrimental to the community.
- F-2. The proposed patio cover will significantly reduce noise levels from the patio area and will remain within the Noise Ordinance criteria. Since the applicant has presented physical barriers to mitigate existing or anticipated increase in noise levels associated with late night hours, an extension of the outdoor patio hours to 2:00 a.m. is justified.

F-3. The applicant has operated the existing eating and drinking establishment in this location since 2002, and is required to proactively control noise generated by patrons of the restaurant. The operator will be required to obtain an Operator License from the NBPd in order to accommodate the proposed closing hour beyond 11:00 p.m. The Operator License will provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the existing establishment, and will provide the NBPd with means to modify, suspend, or revoke the operator's ability to maintain late-hour operations if objectionable condition occur.

SECTION 4. REQUIRED FINDINGS – VARIANCE.

In accordance with Section 20.52.090 (Variance) of the Newport Beach Municipal Code, the following finding and facts in support of such finding is set forth:

Finding:

A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

A-1. The location of the subject property is unique in that it is located on the bay where a bulkhead exists. The patio cover is proposed to mitigate noise generated on an existing patio which encroaches into the 10-foot bulkhead setback. Covering the patio to implement the desired mitigation necessitates an encroachment into the bulkhead setback.

Finding:

B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Support of Finding:

B-1. Two parcels located north of the subject property are also constructed at the bulkhead. American Junkie, located immediately to the north, also has an outdoor patio located at or beyond the bulkhead line which is not covered.

Finding:

C. *Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

C-1. The applicant seeks to construct a patio cover to mitigate noise generated by the use of an existing outdoor patio. Allowing the cover to be constructed within the setback area is anticipated to reduce noise complaints and allow the patio area to be used until 2:00 a.m., daily. Without the patio cover in place, the outdoor area will be restricted to 11:00 p.m., daily.

Finding:

D. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

D-1. Two parcels located north of the subject property are also constructed at the bulkhead. American Junkie, located immediately to the north, also has an outdoor patio located at or beyond the bulkhead line which is not covered.

Facts in Support of Finding:

Finding:

E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

E-1. Two parcels located north of the subject property are also constructed at the bulkhead. American Junkie, located immediately to the north, also has an outdoor patio located at or beyond the bulkhead line which is not covered.

Facts in Support of Finding:

Finding:

F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.

Facts in Support of Finding:

F-1. The encroachment would allow for a patio cover to encroach into the bulkhead setback. The patio cover is an accessory structure which will not extend the useful life of the primary structure.

SECTION 5. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Use Permit No. UP2011-010 and Variance No. VA2013-006, to modify valet parking service, opening hours, waiver of six parking spaces, and closing hour of the outdoor dining area to 2:00 a.m.; but

deny the introduction of patron dancing to the restaurant and the removal of tables and/or chairs from the interior of the restaurant, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.

2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. 3065, 3065 (amended); and Outdoor Dining Permit No. 1, which upon vesting of the rights authorized by this Conditional Use Permit No. UP2011-010 and Variance No. VA 2013-006 shall become null and void.

PASSED, APPROVED AND ADOPTED THIS 5th DAY OF SEPTEMBER, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Bradley Hillgren, Chairman

BY: _____
Kory Kramer, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL (*Project-specific conditions are in italics*)

PLANNING

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (Except as modified by applicable conditions of approval). Prior to implementation of the activities approved by this application, the applicant shall submit a revised floor plan for approval by the Community Development Director, that reflects the limitations and restrictions imposed by the conditions of approval.
2. Conditional Use Permit No. UP2011-010 and Variance No. VA2013-006 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
3. *The hours of operations of the restaurant and outdoor dining area shall be limited to between 10:00 a.m. and 2:00 a.m., daily. The applicant/operator, including any future operator, shall secure and maintain an Operator License issued by the Chief of Police, pursuant to Chapter 5.25 of the NBMC. In no case shall the eating and drinking establishment be permitted to operate beyond the hour of 2:00 a.m., daily.*
4. *All doors and windows of the interior of the eating and drinking establishment shall remain closed whenever live entertainment occurs, except for the ingress and egress of patrons and employees. Doors shall not be propped open, or remain open longer than necessary, to allow for the ingress and egress of patrons and employees.*
5. *The Operator License required to be obtained pursuant to Condition No. 3 and Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the establishment.*
6. *Full meal service shall be provided and available for ordering until 10 p.m. and an abbreviated menu that includes heavy appetizers after 10 p.m. daily and serving until a half-hour before closing.*
7. *The outdoor dining area shall be used in conjunction with the eating and drinking establishment. No special events/promotional activities or the use of amplified sound of any shall be allowed within the outdoor dining area.*
8. *The outdoor dining area shall be limited to 709 square feet in area.*
9. *The outdoor dining area shall be limited to a maximum of 66 seats, including disabled seats/table space, consistent with the floor plans as approved by Plan Check set of plans PC1141-2011. The seating and dining in the outdoor dining patio shall be limited to dining table height (approximately 30 inches) and the use of the elevated counters and barstools is prohibited. Removal of dining tables and chairs shall be prohibited.*

10. *All employees shall park on-site or in the municipal parking lots in the vicinity.*
11. *The net public area of the interior portion of the eating and drinking establishment shall not exceed 1,173 square feet and the outdoor dining area shall not exceed 709 square feet for a total of 1,882 square feet of net public area.*
12. *A minimum of 26 parking spaces shall be provided on-site and payment of in lieu parking fees for 10 spaces for the operation of the eating and drinking establishment. A total of 40 parking spaces shall be provided on-site and by payment of in lieu fees (annually for four parking spaces) for all hours of operation of the establishment (one parking space for each 40 square feet of net public area, 1,589 sq. ft.). Valet parking service shall be provided whenever live entertainment occurs and on an as-needed basis.*
13. *The applicant/operator shall conspicuously post and maintain signs at all outdoor dining, waiting, smoking and parking areas indicating to patrons the proximity of the restaurant and public dock and boat slip areas to the residential areas, requesting patrons: "Be courteous and respectful of our residential neighbors while outside the establishment".*
14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
15. The applicant/operator shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Conditional Use Permit.
16. The applicant/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
17. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
18. This Conditional Use Permit and Variance may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. Approval of Conditional Use Permit No. 2011-010 is for the operation of an eating and drinking establishment defined as "Food Service, Late Hours" per Title 20 of the NBMC, and does not permit or authorize the use or operation of a bar, tavern, cocktail lounge, nightclub or commercial recreational entertainment venue.
20. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.

21. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application, and may require the approval of the Planning Commission.
22. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
23. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
24. The washing of the outdoor dining patio with any cleaning solutions or the use of high pressure or steam cleaning devices is prohibited.
25. Lighting shall be in compliance with applicable standards of the Zoning Code. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
26. All noise generated by the existing eating and drinking establishment use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00 a.m. and 10:00 p.m.	Between the hours of 10:00 p.m. and 7:00 a.m.
Measured at the property line of commercially zoned property:	65 dBA	60 dBA
Measured at the property line of residentially zoned property:	55 dBA	50 dBA
Measured in the interior of a residential structure	45 dBA	40 dBA

27. *Prior to issuance of building permits, the construction plans and materials for the proposed patio cover shall be reviewed by an acoustical engineer retained by the City to verify the potential to mitigate the noise levels*

28. *Prior to certificate of occupancy for use of the outdoor patio beyond 11:00 p.m., an acoustical engineer retained by the City shall conduct noise measurements around the enclosure, at the property lines, and at the residential uses in the vicinity.*
29. The applicant/operator of the facility shall be responsible for and shall actively control any noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment.
30. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
31. *Live entertainment shall be allowed in the interior of the eating and drinking establishment in conjunction with the operator obtaining and maintaining a live entertainment permit from the City. In conjunction with the approval of this use permit, the operator shall amend the existing live entertainment permit consistent with the conditions of approval and the authorized operational changes.*
32. *No outside paging system or loudspeaker device shall be used in conjunction with this establishment.*
33. *No live entertainment shall be permitted in the outdoor dining area. Recorded music or other types of sound amplification within the outdoor dining area shall only be audible to the audience within this area, and shall cease after the hour of 10:00 p.m. daily.*
34. *The applicant/operator shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department (NBPD). The procedures included in the plan and any recommendations made by the NBPD shall be implemented and adhered to for the life of the Conditional Use Permit.*
35. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening and water quality purposes.
36. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
37. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
38. The applicant/operator shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Code Enforcement Division. Cleaning and maintenance of trash dumpsters shall be done

in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).

39. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m. the following morning, unless otherwise approved by the Community Development Director, and may require an amendment to this Use Permit.
40. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
41. No recreational vehicles, boats, food trucks, portable street kitchens or similar vehicles shall be stored at any time at the subject site.
42. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
43. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
44. All exits shall remain free of obstructions and available for ingress and egress at all times.
45. Strict adherence to maximum occupancy limits is required.
46. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
47. All owners, managers and employees selling, serving or giving away alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
48. Any event or activity staged by an outside promoter or entity, where the restaurant owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited.
49. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.

50. No “happy hour” type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.
51. “VIP” passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
52. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPD on demand.
53. No on-site radio, television, video, film or other media broadcasts from the establishment that includes the service of alcoholic beverages shall be permitted without first obtaining an approved Special Event Permit issued by the City. This prohibition of media broadcasts includes recordings to be broadcasted at a later time.
54. All signs shall be in conformance with the provisions of Chapter 20.42 of the Newport Beach Municipal Code.
55. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
56. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
57. *A modification is required to be filed with the Building Division, for compliance to Section 705.11 of the California Building Code.*
58. *Occupant Load shall be maintained at 164 Occupants total for all areas.*
59. *Accessibility upgrades shall be required pursuant to Section 1134.2.1 of the California Building Code.*
60. *Submit architectural and structural plans and calculations for plan review. Two (2) building permits shall be required for the installation of two awnings. Awnings shall meet the requirement for Class A roofing.*
61. *Awnings and canopies shall be designed and constructed to withstand wind or other lateral loads and live loads as required by California Building Code Chapter 31 Section 3105.3.*

62. Canopies shall be constructed with an approved covering that meets the fire propagation performance criteria of NFPA 701 or has a flame spread index not greater than 25 when tested in accordance with ASTM E 84 or UL 723 as per C.B.C Sec. 3105.4.
63. Occupant load and seating arrangement under new exterior awning area must meet California Building Code Chapter 10. These items will be reviewed at the time of plan check.
64. To the fullest extent permitted by law, applicant/operator shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the subject restaurant facility (currently operating as Woody's Wharf Restaurant) including, but not limited to, the Use Permit No. 2011-010 and Variance No. VA2013-006. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant/operator, City, and/or the parties initiating or bringing such proceeding. The applicant/operator shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant/operator shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. PC 2

Resolution for Approval of UP, Denial of
Variance

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2011-01 TO MODIFY VALET SERVICE, OPENING HOURS, CLOSING HOUR OF THE OUTDOOR DINING AREA, WAIVER OF SIX PARKING SPACES, AND ALLOW A PATIO COVER TO ENCROACH INTO THE BULKHEAD SETBACK; BUT DENY A CHANGE TO OUTDOOR OPERATIONS, THE ADDITION OF PATRON DANCING AND VARIANCE NO. VA2013-006; AND SUPERSEDE USE PERMIT NO. 3065 AND OUTDOOR DINING PERMIT NO. 1 AT AN EATING AND DRINKING ESTABLISHMENT LOCATED AT 2318 NEWPORT BOULEVARD (PA2011-055).

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Martin Potts on behalf of the Woody's Wharf Restaurant, with respect to the property located at 2318 Newport Boulevard, and legally described as Lots 6, 7, and 8, Section A Newport Beach, Block 223, requesting to amend the existing use permit to change the operational characteristics of an existing restaurant.
2. An application requesting the following changes in the operational characteristics of the existing restaurant: 1) to extend the opening hour from 11:00 a.m. to 10:00 a.m., daily; extend the closing hour of the existing outdoor dining area from 11:00 p.m. to 2:00 a.m., daily; 2) to accommodate patron dancing in the interior of the restaurant, nightly; 3) to amend the requirement for full-time valet parking service during restaurant operating hours, to only require valet services on an as-needed basis (to accommodate special events and holiday peak use); and 4) to approve a waiver of up to 6 parking spaces that results from the addition of patron dancing and eliminating valet parking service on a full time basis. The application will also eliminate conditions of approval that are duplicative and/or otherwise outdated, as requested by the applicant.
3. On July 11, 2013 an application was submitted to request a variance to construct a patio cover on the existing patio which would encroach into the bulkhead setback.
4. The subject property is located within the Mixed Use – Water Related Zoning District (MU-W2) and the General Plan Land Use Element category is also Mixed Use – Water Related District (MU-W2).
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use – Water Related District (MU-W).
6. The increased occupancy of the outdoor dining area caused by the removal of tables and chairs, as proposed, without the introduction of any noise mitigating apparatus or construction is anticipated to result in increased noise levels that will adversely impact nearby properties and residential occupants.

7. The extension of the closing hour for the outdoor dining area to 2:00 a.m. in conjunction with the increased occupancy of the main dining room and the outdoor dining area, as proposed, is anticipated to result in noise levels that promotes a change in the operational characteristics that results in a change from restaurant to a bar/nightclub that will adversely impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.
8. The current parking requirement is one (1) parking space for every 40 square feet of net public area. The net public area proposed is 1,589 square feet; therefore the parking requirement is 40 spaces. There are 26 spaces on-site (with 6 tandem spaces available only with the valet parking service) and 10 spaces annual in-lieu spaces, and a credit of 4 spaces for the boat docks is granted, for a total 40 parking spaces allocated to the use.
9. The removal of tables and chairs within the main dining room to accommodate patron dancing will result in a change in operational characteristics of the restaurant converting the use to a bar/nightclub, which is not compatible with the surrounding properties or uses, and will be detrimental to the general welfare of the residential occupants in the neighborhood.
10. There is no previous approval for patron dancing in conjunction with the existing restaurant use, and therefore there is no basis or entitlement for the continued use of patron dancing or to allow for the introduction to the existing restaurant use.
11. In accordance with the Newport Beach Municipal Code, on November 8, 2012 the Planning Commission conducted a public hearing and approved: 1) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m., daily; 2) extending the closing hour of the outdoor dining area from 11:00 p.m. to Midnight on Friday and Saturday nights; 3) the use of the valet parking on an as-needed basis; and 4) waiver of a portion of the required parking. The portion of the application that was denied included: 1) the introduction of patron dancing within the interior of the restaurant; 2) removing tables and chairs within the outdoor dining area; and 3) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.
12. On November 26, 2012, the project applicant filed an application and letter of justification appealing the Planning Commission's decision. The City Council considered the appeal at a public hearing on March 12, 2013 and requested the Planning Commission reconsider the item on the basis that the applicant modified the application following the Planning Commission's decision.
13. A public hearing was held on September 5, 2013, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1- Existing Facilities.

2. This exemption applies to existing facilities where it can be demonstrated the project involves negligible or no expansion of the existing use. The change in hours of operation or addition of patron dancing does not involve an expansion or intensification of the existing use. Additionally, the change in the provision of valet parking services on an as-needed basis is consistent with the previous restaurant operations prior to acquisition by the current applicant.

SECTION 3. REQUIRED FINDINGS – USE PERMIT.

In accordance with Sections 20.48.030 (Alcohol Sales) and 20.52.020 (Conditional Use Permit) of the Newport Beach Municipal Code, the following finding and facts in support of such finding is set forth:

Finding:

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support Finding:

- A-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcoholic beverages is intended for the convenience of customers of the restaurant. Operational conditions of approval recommended by the Newport Beach Police Department (NBPD) relative to the sale of alcoholic beverages will ensure compatibility with the surrounding use and minimize alcohol-related impacts.
- A-2. Pursuant to Chapter 5.25 of the NBMC, the operator, as well as any future operators, is has been conditioned to require that the applicant, as well as any future operators, to obtain an Operator License to ensure the establishment is operated in a safe manner and compatible with the neighborhood.
- A-3. The subject property is located within a mixed use district developed primarily with commercial uses. Across the Rhine Channel, the closest residential district is approximately 570 feet away. To the north, the closest residential use is approximately 200 feet away and residential uses associated with the future South Coast Shipyard Project will be approximately 100 feet away. To the west, the nearest residential uses are 230 feet away; and to the north the nearest residential uses are approximately 200 feet away. The nearest park is the public beach adjacent to the West Ocean Front Boardwalk over 650 feet from the subject property. There are no day care centers, recreation facilities, places of religious assembly, or schools in close proximity to the subject property.

In accordance with Section 20.52.020 of the Zoning Code, eating and drinking establishments classified as “Food Service, Late Hours” require the approval of a conditional use permit within the Mixed-Use Water Related (MU-W2) Zoning District. In accordance with Section 20.52.020.F of the Zoning Code, the following findings and facts in support of such findings are set forth:

Finding:

B. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

B-1. The Mixed-Use Water Related (MU-W2 and MU-W) land use designations of the General Plan and Coastal Land Use Plan are intended to encourage water related uses intermixed with general commercial, visitor-serving commercial and residential uses. The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of this land use designation.

B-2. Food service uses are expected to be located in commercial areas, and are complementary to the existing commercial and residential uses in the area. Such uses are frequented by visitors, tenants of the nearby commercial uses, and residents alike.

B-3. The subject property is not part of a specific plan area.

Finding:

C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

C-1. The subject property is located in the Mixed Use – Water Related Zoning District (MU-W2), and eating and drinking establishments classified as "Food Service, Late Hours" require the approval of a conditional use permit.

C-2. As conditioned, the project will comply with Zoning Code standards for eating and drinking establishments. Conditions are included related to on-sale alcoholic beverage activities, including the training of personnel, and the provision of security personnel while live entertainment is offered.

C-3. Pursuant to Chapter 5.25 of the NBMC, the project has been conditioned to require the applicant, and any future operator of the eating and drinking establishment, to obtain an Operator License from the Newport Beach Police Department (NBPD) in order to maintain operating hours beyond 11:00 p.m. and to extend the closing hour of the outdoor dining area to Midnight on Friday and Saturday, as proposed.

Finding:

D. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

- D-1. The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses.
- D-2. As conditioned, the approved seating plan shall be maintained on the basis that the removal of table and chairs from the outdoor dining area increases the number of patrons in this area and likely to result in increased noise levels that will adversely impact nearby properties and residential occupants.
- D-3. The dancing activities are anticipated to result in an increase in the number patrons entering and exiting the building and thereby exposing the increased noise levels of the interior and the noise generated by the live entertainment and/or dancing to the surrounding area.
- D-4. The existing outdoor dining patio is surrounded by glass walls which aid to minimize noise from emanating from this area, but are not adequately effective in controlling noise as evidenced by noise complaints received by the Police Department and the correspondence received.
- D-5. The extension of the closing hour to 2:00 a.m. in conjunction with the increased occupancy of the outdoor dining area, as proposed, is anticipated to result in noise levels that will adversely impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.
- D-6. In order to further reduce the potential impact on neighboring properties, a condition of approval is required to prohibit recorded music or other types of sound amplification within the outdoor dining area at all times. Additionally, conditions of approval require the doors exiting the building to the outdoor dining area to remain closed whenever live entertainment is performed inside the building, except in the case when persons are entering and exiting the building.
- D-7. The location of the valet parking pick-up and drop-off area is shielded from the residences by the restaurant building, thereby mitigating noise impacts from this activity to residential uses across and along the Rhine Channel.
- D-8. Adequate number of parking spaces are available on-site and the valet parking service serving the nighttime operation will prevent traffic backing up onto Newport Boulevard. The waiver of a portion of the on-site parking caused by the elimination of the valet parking service during daytime hours of the operation is offset by the lower parking demand for the use based upon on-site observations and the availability of the municipal parking lots in the vicinity. The use of the valet parking service when live entertainment occurs and on an as-needed basis in the evening will maximize on-site utilization of the parking lot and in the case that the lot is full, parking is available in the municipal metered parking lot across the street (the meters are not in effect after 6:00 p.m. daily). Therefore, the waiver of 6 parking spaces for the daytime and nighttime operational periods as proposed is reasonable in this particular case.

Finding:

- E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- E-1. This is an eating and drinking establishment that has existed in this location since the 1960's. The project site has proven to be physically suitable in size to accommodate the restaurant use.
- E-2. The project site is located on Newport Bay between 24th and 26th Street overlooking the Rhine Channel and is surrounded by similar commercial uses located to the north (next door), and the northwest of the use. This is an appropriate location for an eating and drinking establishment. The restaurant use is complementary to the existing commercial uses in the area, as well as convenient to serve the residential uses located to the north and east across the Rhine Channel in relation to the project site.
- E-3. The Traffic Engineer has previously reviewed the configuration of the parking lot, as well as the valet parking plan, and has determined the parking lot design functions safely and does not prevent emergency vehicle access to the establishment.
- E-4. The site is currently served by public services and utilities.

Finding:

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- F-1. The project has been reviewed and appropriately conditioned to ensure the continued operation of the existing eating and drinking establishment as a restaurant, and not as a bar/nightclub, will not be detrimental to the community.
- F-2. An increase in pedestrian and vehicular activity from patrons using the outdoor dining area during late night and early morning hours will not occur with the closing hour of 11:00 p.m. or Midnight, as recommended in this approval by staff. Since the applicant has not presented any additional physical barriers or other improvements to mitigate existing or anticipated increase in noise levels associated with increased number of patrons on the outdoor dining area.
- F-3. The applicant has operated the existing eating and drinking establishment in this location since 2002, and is required to proactively control noise generated by patrons of the restaurant. The operator will be required to obtain an Operator License from the NBPD in order to accommodate the proposed closing hour beyond 11:00 p.m. The Operator License

will provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the existing establishment, and will provide the NBPD with means to modify, suspend, or revoke the operator's ability to maintain late-hour operations if objectionable condition occur.

SECTION 4. REQUIRED FINDINGS – VARIANCE.

In accordance with Section 20.52.090 (Variance) of the Newport Beach Municipal Code, the following finding and facts in denial of such finding is set forth:

Finding:

- A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Denial of Finding:

A-1.

Finding:

- B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Denial of Finding:

B-1.

Finding:

- C. *Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Denial of Finding:

C-1.

Finding:

- D. *Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

D-1.

Facts in Denial of Finding:

Finding:

- E. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

E-1.

Facts in Support of Finding:

Finding:

- F. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

F-1.

SECTION 5. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Use Permit No. UP2011-010, to modify valet parking service, opening hours, waiver of six parking spaces, and closing hour of the outdoor dining area to 2:00 a.m.; but deny the introduction of patron dancing to the restaurant, the removal of tables and/or chairs from the interior of the restaurant and Variance No. VA2013-006, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. 3065, 3065 (amended); and Outdoor Dining Permit No. 1, which upon vesting of the rights authorized by this Conditional Use Permit No. UP2011-010 shall become null and void.

PASSED, APPROVED AND ADOPTED THIS 5th DAY OF SEPTEMBER, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Bradley Hillgren, Chairman

BY: _____
Kory Kramer, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL (*Project-specific conditions are in italics*)

PLANNING

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (Except as modified by applicable conditions of approval). Prior to implementation of the activities approved by this application, the applicant shall submit a revised floor plan for approval by the Community Development Director, that reflects the limitations and restrictions imposed by the conditions of approval.
2. Conditional Use Permit No. 2011-010 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
3. *The hours of operations of the restaurant shall be limited to between 10:00 a.m. and 2:00 a.m., daily; the hours of operation of the outdoor dining area shall be limited to 10:00 a.m. to 11:00 p.m., Sunday through Thursday; and Midnight on Friday and Saturday nights. The applicant/operator, including any future operator, shall secure and maintain an Operator License issued by the Chief of Police, pursuant to Chapter 5.25 of the NBMC. In no case shall the eating and drinking establishment be permitted to operate beyond the hour of 2:00 a.m. daily. All service and occupancy of the outdoor dining area shall cease after 11:00 p.m., Sunday through Thursday and after Midnight on Friday and Saturday nights.*
4. *All doors and windows of the interior of the eating and drinking establishment shall remain closed whenever live entertainment occurs, except for the ingress and egress of patrons and employees. Doors shall not be propped open, or remain open longer than necessary, to allow for the ingress and egress of patrons and employees.*
5. *The Operator License required to be obtained pursuant to Condition No. 3 and Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the establishment.*
6. *Full meal service shall be provided and available for ordering until 10 p.m. and an abbreviated menu that includes heavy appetizers after 10 p.m. daily and serving until a half-hour before closing.*
7. *The outdoor dining area shall be used in conjunction with the eating and drinking establishment. No special events/promotional activities or the use of amplified sound of any shall be allowed within the outdoor dining area.*
8. *The outdoor dining area shall be limited to 709 square feet in area.*
9. *The outdoor dining area shall be limited to a maximum of 66 seats, including disabled seats/table space, consistent with the floor plans as approved by Plan Check set of plans*

PC1141-2011. The seating and dining in the outdoor dining patio shall be limited to dining table height (approximately 30 inches) and the use of the elevated counters and barstools is prohibited. Removal of dining tables and chairs shall be prohibited.

10. *All employees shall park on-site or in the municipal parking lots in the vicinity.*
11. *The net public area of the interior portion of the eating and drinking establishment shall not exceed 1,173 square feet and the outdoor dining area shall not exceed 709 square feet for a total of 1,882 square feet of net public area.*
12. *A minimum of 26 parking spaces shall be provided on-site and payment of in lieu parking fees for 10 spaces for the operation of the eating and drinking establishment. A total of 40 parking spaces shall be provided on-site and by payment of in lieu fees (annually for four parking spaces) for all hours of operation of the establishment (one parking space for each 40 square feet of net public area, 1,589 sq. ft.). Valet parking service shall be provided whenever live entertainment occurs and on an as-needed basis.*
13. *The applicant/operator shall conspicuously post and maintain signs at all outdoor dining, waiting, smoking and parking areas indicating to patrons the proximity of the restaurant and public dock and boat slip areas to the residential areas, requesting patrons: "Be courteous and respectful of our residential neighbors while outside the establishment".*
14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
15. The applicant/operator shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Conditional Use Permit.
16. The applicant/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
17. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
18. This Conditional Use Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. Approval of Conditional Use Permit No. 2011-010 is for the operation of an eating and drinking establishment defined as "Food Service, Late Hours" per Title 20 of the NBMC, and does not permit or authorize the use or operation of a bar, tavern, cocktail lounge, nightclub or commercial recreational entertainment venue.

20. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.
21. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application, and may require the approval of the Planning Commission.
22. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
23. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
24. The washing of the outdoor dining patio with any cleaning solutions or the use of high pressure or steam cleaning devices is prohibited.
25. Lighting shall be in compliance with applicable standards of the Zoning Code. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
26. All noise generated by the existing eating and drinking establishment use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00 a.m. and 10:00 p.m.	Between the hours of 10:00 p.m. and 7:00 a.m.
Measured at the property line of commercially zoned property:	65 dBA	60 dBA
Measured at the property line of residentially zoned property:	55 dBA	50 dBA
Measured in the interior of a residential structure	45 dBA	40 dBA

27. *The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to insure compliance with these conditions, if required by the Community Development Director.*
28. The applicant/operator of the facility shall be responsible for and shall actively control any noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment.
29. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
30. *Live entertainment shall be allowed in the interior of the eating and drinking establishment in conjunction with the operator obtaining and maintaining a live entertainment permit from the City. In conjunction with the approval of this use permit, the operator shall amend the existing live entertainment permit consistent with the conditions of approval and the authorized operational changes.*
31. *No outside paging system or loudspeaker device shall be used in conjunction with this establishment.*
32. *No live entertainment shall be permitted in the outdoor dining area. Recorded music or other types of sound amplification within the outdoor dining area shall only be audible to the audience within this area, and shall cease after the hour of 10:00 p.m. daily.*
33. *The applicant/operator shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department (NBPd). The procedures included in the plan and any recommendations made by the NBPd shall be implemented and adhered to for the life of the Conditional Use Permit.*
34. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening and water quality purposes.

35. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
36. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
37. The applicant/operator shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Code Enforcement Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
38. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m. the following morning, unless otherwise approved by the Community Development Director, and may require an amendment to this Use Permit.
39. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
40. No recreational vehicles, boats, food trucks, portable street kitchens or similar vehicles shall be stored at any time at the subject site.
41. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
42. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
43. All exits shall remain free of obstructions and available for ingress and egress at all times.
44. Strict adherence to maximum occupancy limits is required.
45. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
46. All owners, managers and employees selling, serving or giving away alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the

certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

47. Any event or activity staged by an outside promoter or entity, where the restaurant owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited.
48. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
49. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.
50. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
51. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPDP on demand.
52. No on-site radio, television, video, film or other media broadcasts from the establishment that includes the service of alcoholic beverages shall be permitted without first obtaining an approved Special Event Permit issued by the City. This prohibition of media broadcasts includes recordings to be broadcasted at a later time.
53. All signs shall be in conformance with the provisions of Chapter 20.42 of the Newport Beach Municipal Code.
54. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
55. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
56. To the fullest extent permitted by law, applicant/operator shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind

and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the subject restaurant facility (currently operating as Woody's Wharf Restaurant) including, but not limited to, the Use Permit No. 2011-010. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant/operator, City, and/or the parties initiating or bringing such proceeding. The applicant/operator shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant/operator shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Attachment No. PC 3

Applicant's Correspondences

**WOODY'S WHARF
PROJECT DESCRIPTION, SUMMARY OF REQUESTED VARIANCE AND
LETTER OF JUSTIFICATION
June 26, 2013**

PROJECT DESCRIPTION

Woody's Wharf has been operating a successful restaurant and bar since 1965 and has become one of the iconic locations for dining with the local Newport Beach community.

BACKGROUND

The existing building and patio is positioned directly behind and adjacent to the existing bulkhead/seawall. According to Section 20.22.030, Mixed-Use Zoning Districts General Development Standards, MU-V, a 10' set back is required from the bulkhead. A variance will be required to construct a patio cover within this setback.

JUSTIFICATION

Pursuant to Section 20.52 of the Zoning Code, the Planning Commission is authorized to approve applications for a Variance, subject to making the following findings, provided by Section 20.52.090F:

- 1. There are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification;**

The general design, size and operating characteristics have not materially changed since the restaurant initially opened in 1965 and is consistent with other eating and drinking establishments in the vicinity. In addition, the current Outdoor Dining Permit allows for an outdoor patio of 709 square feet. The proposed patio cover reflects compliance with this limitation.

- 2. Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity under an identical zoning classifications;**

Given that the existing building is situated within the required setback and neighboring buildings exist with the same encroachment, the proposed patio cover is an extension of the building and is not in excess of that enjoyed by other properties in the vicinity.

- 3. Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;**

SCANNED

Woody's Wharf has been operating on its patio since its establishment in 1965. The proposed patio cover is intended to reduce the typical noises emanating from the patio operations, in an effort to minimize impacts to neighboring properties allowing the applicant to continue its present operations.

4. Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;

Given that the existing building is situated within the required setback and neighboring buildings exist with the same encroachment, the proposed patio cover is an extension of the building and is consistent with that enjoyed by other properties in the vicinity.

5. Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing in the neighborhood; and

Woody's Wharf has successfully been operating a restaurant at this location consistent with its Use Permit granted by the City of Newport Beach in 1965 and its Outdoor Dining Permit granted in 1983. It's goodwill to recognize neighbor concerns and work toward mitigating those concerns is clearly in the best interest of the public convenience, health, safety and general welfare of persons residing or working in the adjacent neighborhood.

6. Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.

Woody's Wharf has been operating as a restaurant / bar at this location since 1965. This use is consistent with the General Plan.

The restaurant / bar use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and Municipal Code as amended by Use Permit No. 3065, approved on November 1, 1983 and amended on March 24, 1988.

Please reference Woody's Wharf Project Description, Summary of Requested Permit Modifications and Letter of Justification submitted to the City on March 22, 2011 and Amended Appeal Application, submitted to the City on February 26, 2013 attached hereto for further information regarding this Application.

August 21, 2012

Mr. Jay Garcia
City of Newport Beach
Planning Department
3300 Newport Boulevard
Newport Beach, CA 92663

RECEIVED BY
COMMUNITY

AUG 21 2012

DEVELOPMENT
CITY OF NEWPORT BEACH

RE: FINDINGS AND JUSTIFICATION FOR REQUEST FOR A CHANGE IN USE PERMIT NO. 3065 AND OUTDOOR DINING PERMIT - WOODY'S WHARF (2318 NEWPORT BOULEVARD) TO ALLOW AN EXISTING OUTDOOR DECK AREA TO REMAIN OPEN NIGHTLY TO 2:00 AM [CASE NO: USE PERMIT No. 3065 AND OUTDOOR DINING PERMIT No. 1]

Dear Jay:

On behalf of the Woody's Wharf, and in response to your letter dated July 24, 2012 and our subsequent conversations, we hereby submit to the City of Newport Beach the following Findings and Letter of Justification to amend Use Permit No. 3065. We are attaching a red-line copy of the proposed amended conditions of approval along with an accepted version for your use. Also included are the site plan and floor plans.

Project Setting

The project site is an existing restaurant building, Woody's Wharf, located at 2318 Newport Boulevard in Newport Beach, California. Surrounding land uses include restaurants to the north, the Rhine Channel to the east, a sales boat facility to the south and a municipal parking lot to the south and west. A shipyard and residential uses exist across the channel to the east.

Entitlement Background

Woody's Wharf was originally constructed in 1965 with a net public area (NPA) of 1,173 square feet. On November 10, 1983, the Planning Commission approved Use Permit No. 3065 to permit a 416 square foot increase in NPA allowing the use of the restaurant's patio area to be used for outdoor dining and drinking purposes.

Use Permit No. 3065 was amended in 1988 to extend the hours of the outdoor patio area.

Outdoor Dining Permit No. 1 was approved in 1995 to allow for the expansion of the outdoor dining area by 293 square feet for a total of 709 square feet of outdoor dining area.

On September 18, 2008, the Newport Beach Police Department met with Woody's Wharf and issued a statement that, "their Use Permit allows them to operate the outdoor patio until close. It is the outdoor "deck" that may not be utilized after 11:00 pm."

Project Description

The applicant (Woody's Wharf operator) proposes to continue its current business operations of the restaurant under the proposed amended conditions of approval, which combines the conditions contained in the previous City-approved Conditional Use Permit and Outdoor Dining Permit (attached). This request for a modification of the current use permit, generally includes amended conditions for (a) a clarification in the hours of operation of the outdoor patio until business closing or no later than 2:00 am, (b) maintain closing of the deck at 11:00 pm which deck is a completely separate part of the building, (c) indoor dancing nightly until closing confined to the interior of the building and (d) an adjustment in the occupant load for the building of 228 maximum occupants. All of these suggestions are consistent with the current operations of the restaurant.

Justification and Findings

Findings and justification for each of the criteria set forth in Section 20.52.020F of the Zoning Code is provided below.

1. *The use is consistent with the General Plan and any applicable specific plan.*

The granting of the applicant's request is consistent with the intent of the General Plan.

2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

The existing use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and Municipal Code.

3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity. This request for this amended Use Permit is to legitimize operations that have been on-going for decades at the restaurant. These operational characteristics are the same privileges which have been, and continue to be granted by the City of Newport Beach.

Woody's Wharf restaurant is irregular in shape. It is an L-shaped building, which was constructed over three lots (owned by a single landowner). Residents are located east across the Rhine Channel. Although these residents are located approximately 600 feet from the restaurant, noise levels from adjacent restaurants and businesses and those perceived being generated from Woody's Wharf carry across the channel.

Configuration of the building, its location adjacent to the channel and its sitting on three lots that are owned by a single landowner are special circumstances where strict compliance with the Municipal Code significantly limits the ability of the applicant to comply with its use restrictions relating to noise.

If there was a way for the City to approve the addition of an overhead structure above the patio to assist in the reduction of any noise level generated by the use of the patio, the applicant would consider constructing this type of mitigating enclosure. We understand the building codes will not allow construction of a building over a property line, however, given the existing building as constructed several years ago extends across a property line already, the proposed patio cover would extend across the same property line. This does not create any further violation than that which already existed when the building was first permitted and constructed. If, and when the Woody's Restaurant's lease expires and the building is demolished, the building codes could then be enforced with respect to not allowing a building to extend across a property line, eliminating all code violations.

4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and vehicle (e.g., fire and medical) access and public services and utilities.*

The configuration of the site and building is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and vehicle access and public services and utilities.

5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Granting of the change in the CUP is consistent with the current business operations of the restaurant. This change in the CUP will not be detrimental to the harmonious and orderly growth of the City, or otherwise constitute a hazard to the public convenience, health, safety, or general welfare of persons residing or working in the neighborhoods.

Properties adjacent to Woody's Wharf have the right of use and quiet enjoyment of their properties free from excess noise. The applicant maintains they are in compliance with the current City-permitted use restrictions, and much of the noise generated from the area is not contributed by Woody's Wharf. This can be evidenced by the reduction in noise related complaints which have been documented in the area since after several

nearby restaurant establishments have closed their businesses while Woody's Wharf has continued to operate.

Request

A request to combine and modify the conditions of approval under Use Permit No. 3065 and Outdoor Dining Permit No. 1, to be consistent with the restaurants current and ongoing operations. The attached proposed amended conditions of approval reflect modifications necessary to meet the on-going business operations, which are found in other similar businesses in the generally vicinity of Woody's Wharf.

This request specifically includes the following proposed clarifications to the current conditions of approval:

- 1) Allow the use of the outdoor patio to closing or 2:00AM daily.
- 2) Allow indoor dancing nightly until closing, confined to the interior of the building.
- 3) Adjust the maximum occupancy load for the building at 228.

Jay, please let us know if you have any questions, or need any further materials which will assist staff in its review and processing of this application.

Sincerely,

MPA, Inc.
on behalf of Woody's Wharf

Martin T. Potts
MPA, Inc.
a California Corporation

MTP/idi

cc: Mr. Mark Serventi
Mr. Greg Pappas
Mr. Ralph Furra

Attachment No. PC 4

Planning Commission Resolution, Staff
Report and Minutes dated November 8,
2102

RESOLUTION NO. 1898

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2011-01 TO MODIFY VALET SERVICE, OPENING HOURS, CLOSING HOUR OF THE OUTDOOR DINING AREA AND WAIVER OF SIX PARKING SPACES; BUT DENY A CHANGE TO OUTDOOR DINING OPERATIONS, AND THE ADDITION OF PATRON DANCING; AND SUPERSEDING USE PERMIT NO. 3065 AND OUTDOOR DINING PERMIT NO. 1 AT AN EATING AND DRINKING ESTABLISHMENT LOCATED AT 2318 NEWPORT BOULEVARD (PA2011-055).

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Martin Potts on behalf of the Woody's Wharf Restaurant, with respect to the property located at 2318 Newport Boulevard, and legally described as Lots 6, 7, and 8, Section A Newport Beach, Block 223, requesting to amend the existing use permit to change the operational characteristics of an existing restaurant.
2. The applicant filed an application requesting the following changes in the operational characteristics of the existing restaurant: 1) to extend the opening hour from 11:00 a.m. to 10:00 a.m., daily; extend the closing hour of the existing outdoor dining area from 11:00 p.m. to 2:00 a.m., daily; 2) to accommodate patron dancing in the interior of the restaurant, nightly; 3) to amend the requirement for full-time valet parking service during restaurant operating hours, to only require valet services on an as-needed basis (to accommodate special events and holiday peak use); and 4) to approve a waiver of up to 6 parking spaces that results from the addition of patron dancing and eliminating valet parking service on a full time basis. The application will also eliminate conditions of approval that are duplicative and/or otherwise outdated, as requested by the applicant.
3. The subject property is located within the Mixed Use – Water Related Zoning District (MU-W2) and the General Plan Land Use Element category is also Mixed Use – Water Related District (MU-W2).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use – Water Related District (MU-W).
5. The increased occupancy of the outdoor dining area caused by the removal of tables and chairs, as proposed, without the introduction of any noise mitigating apparatus or construction is anticipated to result in increased noise levels that will adversely impact nearby properties and residential occupants.
6. The extension of the closing hour for the outdoor dining area to 2:00 a.m. in conjunction with the increased occupancy of the main dining room and the outdoor dining area, as proposed, is anticipated to result in noise levels that promotes a change in the operational characteristics that results in a change from restaurant to a bar/nightclub that will adversely

impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.

7. The current parking requirement is one (1) parking space for every 40 square feet of net public area. The net public area proposed is 1,589 square feet; therefore the parking requirement is 40 spaces. There are 26 spaces on-site (with 6 tandem spaces available only with the valet parking service) and 10 spaces annual in-lieu spaces, and a credit of 4 spaces for the boat docks is granted, for a total 40 parking spaces allocated to the use.
8. A public hearing was held on November 8, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
9. The removal of tables and chairs within the main dining room to accommodate patron dancing will result in a change in operational characteristics of the restaurant converting the use to a bar/nightclub, which is not compatible with the surrounding properties or uses, and will be detrimental to the general welfare of the residential occupants in the neighborhood.
10. There is no previous approval for patron dancing in conjunction with the existing restaurant use, and therefore there is no basis or entitlement for the continued use of patron dancing or to allow for the introduction to the existing restaurant use.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1- Existing Facilities.
2. This exemption applies to existing facilities where it can be demonstrated the project involves negligible or no expansion of the existing use. The change in hours of operation or addition of patron dancing does not involve an expansion or intensification of the existing use. Additionally, the change in the provision of valet parking services on an as-needed basis is consistent with the previous restaurant operations prior to acquisition by the current applicant.

SECTION 3. REQUIRED FINDINGS.

In accordance with Sections 20.48.030, and 20.52.020 of the Newport Beach Municipal Code, the following finding and facts in support of such finding is set forth:

Finding:

- A. The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support Finding:

- A-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcoholic beverages is intended for the convenience of customers of the restaurant. Operational conditions of approval recommended by the Newport Beach Police Department (NBPd) relative to the sale of alcoholic beverages will ensure compatibility with the surrounding use and minimize alcohol-related impacts.
- A-2. Pursuant to Chapter 5.25 of the NBMC, the operator, as well as any future operators, is has been conditioned to require that the applicant, as well as any future operators, to obtain an Operator License to ensure the establishment is operated in a safe manner and compatible with the neighborhood.
- A-3. The subject property is located within a mixed use district developed primarily with commercial uses. Across the Rhine Channel, the closest residential district is approximately 570 feet away. To the north, the closest residential use is approximately 200 feet away and residential uses associated with the future South Coast Shipyard Project will be approximately 100 feet away. To the west, the nearest residential uses are 230 feet away; and to the north the nearest residential uses are approximately 200 feet away. The nearest park is the public beach adjacent to the West Ocean Front Boardwalk over 650 feet from the subject property. There are no day care centers, recreation facilities, places of religious assembly, or schools in close proximity to the subject property.

In accordance with Section 20.52.020 of the Zoning Code, eating and drinking establishments classified as "Food Service, Late Hours" require the approval of a conditional use permit within the Mixed-Use Water Related (MU-W2) Zoning District. In accordance with Section 20.52.020.F of the Zoning Code, the following findings and facts in support of such findings are set forth:

Finding:

B. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

- B-1. The Mixed-Use Water Related (MU-W2 and MU-W) land use designations of the General Plan and Coastal Land Use Plan are intended to encourage water related uses intermixed with general commercial, visitor-serving commercial and residential uses. The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of this land use designation.
- B-2. Food service uses are expected to be located in commercial areas, and are complementary to the existing commercial and residential uses in the area. Such uses are frequented by visitors, tenants of the nearby commercial uses, and residents alike.
- B-3. The subject property is not part of a specific plan area.

Finding:

- C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

- C-1. The subject property is located in the Mixed Use – Water Related Zoning District (MU-W2), and eating and drinking establishments classified as “Food Service, Late Hours” require the approval of a conditional use permit.
- C-2. As conditioned, the project will comply with Zoning Code standards for eating and drinking establishments. Conditions are included related to on-sale alcoholic beverage activities, including the training of personnel, and the provision of security personnel while live entertainment is offered.
- C-3. Pursuant to Chapter 5.25 of the NBMC, the project has been conditioned to require the applicant, and any future operator of the eating and drinking establishment, to obtain an Operator License from the Newport Beach Police Department (NBPD) in order to maintain operating hours beyond 11:00 p.m., and to extend the closing hour of the outdoor dining area to Midnight on Friday and Saturday, as proposed.

Finding:

- D. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

- D-1. The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses.
- D-2. The removal of table and chairs from the outdoor dining area, as proposed without the introduction of any noise mitigating apparatus or construction, not only increases the number of patrons both inside and outside but is also anticipated to result in increased noise levels that will adversely impact nearby properties and residential occupants, with the outside noise levels having the greatest impact on the neighbors.
- D-3. The dancing activities are anticipated to result in an increase in the number patrons entering and exiting the building and thereby exposing the increased noise levels of the interior and the noise generated by the live entertainment and/or dancing to the surrounding area.
- D-4. The extension of the closing hour to 2:00 a.m. in conjunction with the increased occupancy of the outdoor dining area, as proposed, is anticipated to result in noise levels

that will adversely impact nearby properties and residential occupants into the late night hours, and is not a compatible activity for the neighborhood.

- D-5. The application as presented has not proposed alternatives or improvements to the existing glass barriers to mitigate existing noise issues and complaints to justify an increase in the closing hour of the outdoor dining area. Therefore, maintaining the current closing hour of 11:00 p.m., Sunday through Thursday, and Midnight on Friday and Saturday nights is required to mitigate and limit that impact, as recommended by staff in the attached conditions of approval. In order to further reduce the potential impact on neighboring properties, a condition of approval is required to prohibit recorded music or other types of sound amplification within the outdoor dining area at all times.
- D-6. The design and construction materials of the outdoor dining patio (existing glass walls) aid to minimize noise from emanating from this area, but are not adequately effective in controlling noise as evidenced by noise complaints received by the Police Department and the correspondence received. As conditioned, the limited hours of use of the outdoor dining area to 11:00 p.m. is appropriate in this case to alleviate noise related issues and complaints that cannot be otherwise mitigated. That the approval to allow for a closing hour of Midnight on Friday and Saturday nights is appropriate in this particular case since the outdoor area is restricted to use for dining only and not an extension of the bar activities. Additionally, conditions of approval require the doors exiting the building to the outdoor dining area to remain closed whenever live entertainment is performed inside the building, except in the case when persons are entering and exiting the building. The hours of the outdoor area are appropriate since no physical barriers have been proposed to aid in further mitigating noise levels that are anticipated to rise if occupancy is increased, as proposed by the applicant.
- D-7. The location of the valet parking pick-up and drop-off area is shielded from the residences by the restaurant building, thereby mitigating noise impacts from this activity to residential uses across and along the Rhine Channel.
- D-8. Adequate number of parking spaces are available on-site and the valet parking service serving the nighttime operation will prevent traffic backing up onto Newport Boulevard. The waiver of a portion of the on-site parking caused by the elimination of the valet parking service during daytime hours of the operation is offset by the lower parking demand for the use based upon on-site observations and the availability of the municipal parking lots in the vicinity. The use of the valet parking service when live entertainment occurs and on an as-needed basis in the evening will maximize on-site utilization of the parking lot and in the case that the lot is full, parking is available in the municipal metered parking lot across the street (the meters are not in effect after 6:00 p.m. daily). Therefore, the waiver of 6 parking spaces for the daytime and nighttime operational periods as proposed is reasonable in this particular case.

Finding:

- E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- E-1. This is an eating and drinking establishment that has existed in this location since the 1960's. The project site has proven to be physically suitable in size to accommodate the restaurant use.
- E-2. The project site is located on Newport Bay between 24th and 26th Street overlooking the Rhine Channel and is surrounded by similar commercial uses located to the north (next door), and the northwest of the use. This is an appropriate location for an eating and drinking establishment. The restaurant use is complementary to the existing commercial uses in the area, as well as convenient to serve the residential uses located to the north and east across the Rhine Channel in relation to the project site.
- E-3. The Traffic Engineer has previously reviewed the configuration of the parking lot, as well as the valet parking plan, and has determined the parking lot design functions safely and does not prevent emergency vehicle access to the establishment.
- E-4. The site is currently served by public services and utilities.

Finding:

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- F-1. The project has been reviewed and appropriately conditioned to ensure the continued operation of the existing eating and drinking establishment as a restaurant, and not as a bar/nightclub, will not be detrimental to the community.
- F-2. An increase in pedestrian and vehicular activity from patrons using the outdoor dining area during late night and early morning hours will not occur with the closing hour of 11:00 p.m. or Midnight, as recommended in this approval by staff. Since the applicant has not presented any additional physical barriers or other improvements to mitigate existing or anticipated increase in noise levels associated with increased number of patrons on the outdoor dining area.
- F-3. The applicant has operated the existing eating and drinking establishment in this location since 2002, and is required to proactively control noise generated by patrons of the restaurant. The operator will be required to obtain an Operator License from the NBPD in order to accommodate the proposed closing hour of Midnight on Friday and Saturday nights for the outdoor dining area. The Operator License will provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the existing establishment, and will provide the NBPD with

means to modify, suspend, or revoke the operator's ability to maintain late-hour operations if objectionable condition occur.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Use Permit NO. 2011-010, to modify valet parking service, opening hours, waiver of six parking spaces, and closing hour of Midnight on Friday and Saturday nights of the outdoor dining area; but deny the introduction of patron dancing to the restaurant, the removal of tables and/or chairs from the interior of the restaurant or any change to the outdoor dining operations, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. 3065, 3065 (amended); and Outdoor Dining Permit No. 1, which upon vesting of the rights authorized by this Conditional Use Permit No. UP2011-010 shall become null and void.

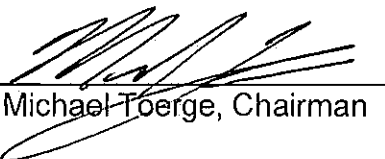
PASSED, APPROVED AND ADOPTED THIS 8th DAY OF NOVEMBER, 2012.

AYES: Brown, Hillgren, Kramer and Myers

NOES: Ameri, Toerge and Tucker

ABSTAIN: None

ABSENT: None

BY: 
Michael Toerge, Chairman

BY: _____
Fred Ameri, Secretary

means to modify, suspend, or revoke the operator's ability to maintain late-hour operations if objectionable condition occur.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Use Permit NO. 2011-010, to modify valet parking service, opening hours, waiver of six parking spaces, and closing hour of Midnight on Friday and Saturday nights of the outdoor dining area; but deny the introduction of patron dancing to the restaurant, the removal of tables and/or chairs from the interior of the restaurant or any change to the outdoor dining operations, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. 3065, 3065 (amended); and Outdoor Dining Permit No. 1, which upon vesting of the rights authorized by this Conditional Use Permit No. UP2011-010 shall become null and void.

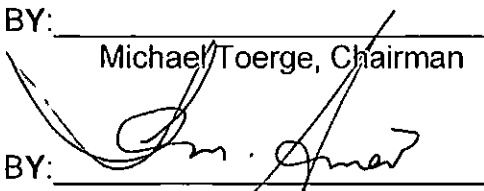
PASSED, APPROVED AND ADOPTED THIS 8th DAY OF NOVEMBER, 2012.

AYES: Brown, Hillgren, Kramer and Myers

NOES: Ameri, Toerge and Tucker

ABSTAIN: None

ABSENT: None

BY: 
Michael Toerge, Chairman

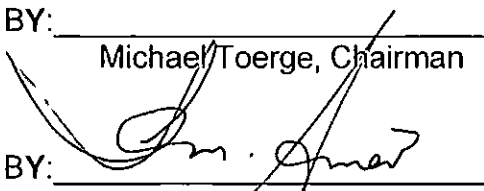
BY: 
Fred Ameri, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL *(Project-specific conditions are in italics)*

PLANNING

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (Except as modified by applicable conditions of approval). Prior to implementation of the activities approved by this application, the applicant shall submit a revised floor plan for approval by the Community Development Director, that reflects the limitations and restrictions imposed by the conditions of approval.
2. Conditional Use Permit No. 2011-010 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
3. *The hours of operations of the restaurant shall be limited to between 10:00 a.m. and 2:00 a.m., daily; the hours of operation of the outdoor dining area shall be limited to 10:00 a.m. to 11:00 p.m., Sunday through Thursday; and Midnight on Friday and Saturday nights. The applicant/operator, including any future operator, shall secure and maintain an Operator License issued by the Chief of Police, pursuant to Chapter 5.25 of the NBMC. In no case shall the eating and drinking establishment be permitted to operate beyond the hour of 2:00 a.m. daily. All service and occupancy of the outdoor dining area shall cease after 11:00 p.m., Sunday through Thursday and after Midnight on Friday and Saturday nights.*
4. *All doors and windows of the interior of the eating and drinking establishment shall remain closed whenever live entertainment occurs, except for the ingress and egress of patrons and employees. Doors shall not be propped open, or remain open longer than necessary, to allow for the ingress and egress of patrons and employees.*
5. *The Operator License required to be obtained pursuant to Condition No. 3 and Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the establishment.*
6. *Full meal service shall be provided and available for ordering until 10 p.m. and an abbreviated menu that includes heavy appetizers after 10 p.m. daily and serving until a half-hour before closing.*
7. *The outdoor dining area shall be used in conjunction with the eating and drinking establishment. No special events/promotional activities or the use of amplified sound of any shall be allowed within the outdoor dining area.*
8. *The outdoor dining area shall be limited to 709 square feet in area.*
9. *The outdoor dining area shall be limited to a maximum of 66 seats, including disabled seats/table space, consistent with the floor plans as approved by Plan Check set of plans*

PC1141-2011. The seating and dining in the outdoor dining patio shall be limited to dining table height (approximately 30 inches) and the use of the elevated counters and barstools is prohibited. Removal of dining tables and chairs shall be prohibited.

10. *All employees shall park on-site or in the municipal parking lots in the vicinity.*
11. *The net public area of the interior portion of the eating and drinking establishment shall not exceed 1,173 square feet and the outdoor dining area shall not exceed 709 square feet for a total of 1,882 square feet of net public area.*
12. *A minimum of 26 parking spaces shall be provided on-site and payment of in lieu parking fees for 10 spaces for the operation of the eating and drinking establishment. A total of 40 parking spaces shall be provided on-site and by payment of in lieu fees (annually for four parking spaces) for all hours of operation of the establishment (one parking space for each 40 square feet of net public area, 1,589 sq. ft.). Valet parking service shall be provided whenever live entertainment occurs and on an as-needed basis.*
13. *The applicant/operator shall conspicuously post and maintain signs at all outdoor dining, waiting, smoking and parking areas indicating to patrons the proximity of the restaurant and public dock and boat slip areas to the residential areas, requesting patrons: "Be courteous and respectful of our residential neighbors while outside the establishment".*
14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
15. The applicant/operator shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Conditional Use Permit.
16. The applicant/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
17. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
18. This Conditional Use Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. Approval of Conditional Use Permit No. 2011-010 is for the operation of an eating and drinking establishment defined as "Food Service, Late Hours" per Title 20 of the NBMC, and does not permit or authorize the use or operation of a bar, tavern, cocktail lounge, nightclub or commercial recreational entertainment venue.

20. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.
21. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application, and may require the approval of the Planning Commission.
22. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
23. Water should not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
24. The washing of the outdoor dining patio with any cleaning solutions or the use of high pressure or steam cleaning devices is prohibited.
25. Lighting shall be in compliance with applicable standards of the Zoning Code. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
26. All noise generated by the existing eating and drinking establishment use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00 a.m. and 10:00 p.m.	Between the hours of 10:00 p.m. and 7:00 a.m.
Measured at the property line of commercially zoned property:	65 dBA	60 dBA
Measured at the property line of residentially zoned property:	55 dBA	50 dBA
Measured in the interior of a residential structure	45 dBA	40 dBA

27. *The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to insure compliance with these conditions, if required by the Community Development Director.*
28. The applicant/operator of the facility shall be responsible for and shall actively control any noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment.
29. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
30. *Live entertainment shall be allowed in the interior of the eating and drinking establishment in conjunction with the operator obtaining and maintaining a live entertainment permit from the City. In conjunction with the approval of this use permit, the operator shall amend the existing live entertainment permit consistent with the conditions of approval and the authorized operational changes.*
31. *No outside paging system or loudspeaker device shall be used in conjunction with this establishment.*
32. *No live entertainment shall be permitted in the outdoor dining area. Recorded music or other types of sound amplification within the outdoor dining area shall only be audible to the audience within this area, and shall cease after the hour of 10:00 p.m. daily.*
33. *The applicant/operator shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department (NBPD). The procedures included in the plan and any recommendations made by the NBPD shall be implemented and adhered to for the life of the Conditional Use Permit.*
34. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening and water quality purposes.

35. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
36. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
37. The applicant/operator shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Code Enforcement Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
38. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m. the following morning, unless otherwise approved by the Community Development Director, and may require an amendment to this Use Permit.
39. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
40. No recreational vehicles, boats, food trucks, portable street kitchens or similar vehicles shall be stored at any time at the subject site.
41. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
42. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
43. All exits shall remain free of obstructions and available for ingress and egress at all times.
44. Strict adherence to maximum occupancy limits is required.
45. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
46. All owners, managers and employees selling, serving or giving away alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the

certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

47. Any event or activity staged by an outside promoter or entity, where the restaurant owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited.
48. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
49. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.
50. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
51. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPd on demand.
52. No on-site radio, television, video, film or other media broadcasts from the establishment that includes the service of alcoholic beverages shall be permitted without first obtaining an approved Special Event Permit issued by the City. This prohibition of media broadcasts includes recordings to be broadcasted at a later time.
53. All signs shall be in conformance with the provisions of Chapter 20.42 of the Newport Beach Municipal Code.
54. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
55. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
56. To the fullest extent permitted by law, applicant/operator shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind

and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the subject restaurant facility (currently operating as Woody's Wharf Restaurant) including, but not limited to, the Use Permit No. 2011-010. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant/operator, City, and/or the parties initiating or bringing such proceeding. The applicant/operator shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant/operator shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT

November 8, 2012

Agenda Item 5

SUBJECT: Woody's Wharf Use Permit - (PA2011-055)
2318 Newport Boulevard
▪ Conditional Use Permit No. UP2011-010

APPLICANT: Martin Potts, MPA, Inc., on behalf of Woody's Wharf Restaurant

PLANNER: Javier S. Garcia, AICP, Senior Planner
(949) 644-3206, jgarcia@newportbeachca.gov

PROJECT SUMMARY

Amend the existing use permit to change the operational characteristics of an existing restaurant. The changes include: 1) the introduction of patron dancing; 2) extending the opening hour from 11:00 a.m. to 10:00 a.m. and the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.; 3) amending the requirement for full-time valet parking service during restaurant operating hours; and 4) waiving up to 6 parking spaces resulting from increased occupancy created by patron dancing and the elimination of valet parking service. The application will also address minor changes to and the elimination of conditions of approval that are duplicative, no longer applicable, or need clarification.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. _____ approving Conditional Use Permit No. UP2011-010 (Attachment No. PC 1), to allow changes to the operation of the restaurant that include:
 - 1) the introduction of patron dancing within the interior of the restaurant;
 - 2) extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.;
 - 3) the use of the valet parking on an as-needed basis; and
 - 4) waiver of a portion of the required parking.

But denying the request to allow changes to the use of the outdoor dining area, that include:

- 1) removing tables and chairs within the outdoor dining area; and
- 2) extending the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.

VICINITY MAP



GENERAL PLAN and COASTAL LAND USE PLAN



ZONING



LOCATION	GENERAL PLAN and COASTAL LAND USE PLAN	ZONING	CURRENT USE
ON-SITE	MU-W2 (Mixed-Use Water Related)	MU-W2 (Mixed-Use Water Related)	Woody's Wharf Restaurant
NORTH and SOUTH	MU-W2 and MU-W (Mixed-Use Water Related)	MU-W2 (Mixed-Use Water Related)	Restaurant, with Commercial and Residential Uses Beyond To the South - Commercial Buildings (Vacant)
EAST	The Rhine Channel and CM (Marine Comm) and RM (Multi-Unit Residential)	The Rhine Channel and CM (Marine Commercial) and RM (Multi-Unit Residential)	The Rhine and Lido Peninsula Beyond
WEST	Public Right-of-Way with Municipal Parking Lot and R-1 (Single-Unit Residential)	Municipal Parking Lot and R-1 (Single-Unit Residential) beyond	Municipal Parking lots and Residential Uses Beyond

INTRODUCTION

Project Setting

The restaurant is located on the east side of Newport Boulevard between 24th and 26th Streets overlooking the Rhine Channel. The property is comprised of three lots with a total area of approximately 13,260 square feet, with a commercial building which crosses the interior property lines. The restaurant has been in operation since 1965 and offers live entertainment. The restaurant building measures approximately 3,305 square feet with 1,173 square feet of interior dining area and a 709 square foot outdoor dining area. There are 26 on-site parking spaces (6 spaces are tandem in accordance with the valet parking plan). The site plan and floor plans are depicted in Attachment PC11. The project provides space for approximately eight (8) boats on the Rhine Channel, available for patrons who choose to take a boat to the restaurant. Staff will also present the issue the combining of lots and recent issue related to the closing of the restaurant kitchen at 10:00 p.m.

Project Description

The application involves an amendment to an existing use permit to change the operational characteristics of an existing restaurant. The changes include: 1) the introduction of patron dancing; 2) extending the opening hour from 11:00 a.m. to 10:00 a.m. and the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.; 3) amending the requirement for full-time valet parking service during restaurant operating hours; and 4) waiving up to 6 parking spaces resulting from increased occupancy created by patron dancing and the elimination of valet parking service. The application will also eliminate conditions of approval that are duplicative and/or otherwise outdated, as outlined in the applicant's justification letter (Attachment PC2) and subsequent letter responding to the proposed conditions of approval (Attachment PC3).

Background

On November 10, 1983, the Planning Commission approved Use Permit No. 3065 allowing a 416 square foot increase in the restaurant's "net public area" (NPA) for outdoor dining. The total net public area was 1,589 square feet (1,173 interior and 416 outdoor). The use permit also allowed tandem parking with valet parking service (20 spaces plus 6 spaces in tandem). Additionally, the operator was required to pay annual in-lieu fees to the City for parking in the municipal parking lot (10 parking spaces). The minutes and plans approved at that hearing are attached (Attachment No. PC4).

In May of 1986, the Planning Department became aware that changes had occurred in the patio/deck area had been increased beyond the 416 square feet as authorized. An application to amend Use Permit No.3065 was submitted on December 10, 1987 requesting an increase to the patio/deck area of approximately 1,082 square feet. The matter was heard on February 4, 1988 with a unanimous vote (7 ayes) to deny the

request. The minutes and proposed plans are attached (Attachment No. PC5). The Planning Commission, at that time, also requested a review of compliance with the conditions of approval of Use Permit No. 3065. That hearing was scheduled for March 24, 1988.

On March 24, 1988, the Planning Commission held a public hearing to amend Use Permit No. 3065 and require the installation of physical barriers to limit the outdoor dining area to 416 square feet and to reduce noise. The minutes and plans approved at that hearing are attached (Attachment No. PC6).

On October 4, 1995, the Planning Department approved Outdoor Dining Permit No. 1, which allowed a 293 square foot expansion the outdoor dining area. Condition No.3 required the use of the outdoor patio to cease at 11:00 p.m. Please see the October 4, 1995 approval of Outdoor Dining Permit No. 1 and plans (including delineation of approved NPA on deck/patio). The approval letter and plans are attached (Attachment No. PC7).

The applicant took over the operation in 2002 and has allowed patron dancing and has kept the outdoor dining area open later than 11:00 p.m. Complaints have been received regarding noise. The subject application proposes to address the hours of operation, noise complaints, and operational changes that include the addition of dancing, and valet parking service. The applicant obtained a live entertainment permit issued on March 16, 2006, that authorized live entertainment in conjunction with the restaurant, conditions of approval related to the use and a condition that prohibits dancing (Attachment PC 8).

DISCUSSION

Analysis

General Plan/CLUP

The Land Use Element of the General Plan and the Coastal Land Use Plan (CLUP) designate the site and the adjacent properties as Mixed Use- Water Related (MU-W2 and MU-W, respectively). The project is consistent with this designation as eating and drinking establishments are visitor-serving and commercial uses. Furthermore, Land Use Policy LU 6.19.2 (Bay Fronting Properties) encourages marine-related and visitor-serving retail, restaurant, hotel, institutional, and recreational uses, with some allowance for residential uses. Both the General Plan and the CLUP set a development intensity limit of 0.5 floor area to land area ratio (FAR) for non-residential development. The 3,305 total square foot building and 13,260 gross square feet for the project site results in an FAR of 0.25. The project complies with the maximum FAR permitted by the General Plan FAR designated for commercial uses.

Zoning

The existing eating and drinking establishment is located in MU-W2 (Mixed-Use Water Related) Zoning District and is consistent with the land uses intended for properties fronting Newport Boulevard within McFadden Square/Cannery Village neighborhood.

Dancing

The facility currently provides live entertainment (grandfathered) and dancing (unpermitted). The live entertainment operates in conjunction with a valid live entertainment permit that was issued on March 14, 2006. Dancing activities as currently operate is prohibited under the Live Entertainment Permit Condition of Approval No. 3; and the location of a dance floor or area within the restaurant is not in substantial conformance with Use Permit No. 3065 as amended on March 24, 1988, specifically Condition of Approval No. 1 specifies:

1. That development shall be in substantial conformance the plot plan and floor plan approved by the Planning Commission on November 10, 1983, except as noted below.

Therefore, if the Planning Commission approves patron dancing within the interior of the facility, the live entertainment permit must also be amended to reflect approved changes to the operation and related conditions of approval.

At approximately 10:00 p.m., the tables and chairs within the center of the main dining area are removed to provide an area for dancing of approximately 400 square feet. Additionally, a portion of the tables and chairs on the outdoor dining area are removed to provide an area for patrons displaced by the dance floor, as depicted on the Late Hour Floor Plan, approximately 400 square feet (Attachment PC9). The operator was notified on August 13, 2010, following meetings between the applicant and City Staff; and again on July 19, 2011 (Attachment PC 10) that an amendment to the use permit is required to address the proposed change in operation to allow dancing, the change in floor plan related to the outdoor dining area, and to review the impact on parking demand for the facility. If the use permit is approved to allow patron dancing within the interior of the facility, the live entertainment permit must also be amended to reflect approved changes to the operation and related conditions of approval.

The removal of table and chairs as described not only increases the number of patrons both inside and outside, but also results in an increase in the noise levels of those areas which adversely impacts the neighboring properties. The dancing activities are also anticipated to result in an increase in the number patrons entering and exiting the building and thereby exposing the increased noise levels of the interior and the noise generated by the live entertainment located near the access to the outdoor dining area.

The Police Department has reviewed the Use Permit application and has significant concerns with the dancing as proposed at the establishment, as it can lead to a

nightclub type business model. Even with stringent conditions of approval in place, these types of operations can create a drain on police resources. The Police Department also notes that the Commonwealth Lounge, next door, also contributes to the drain on police services in the vicinity. Therefore, staff believes that the recommended conditions of approval to limit the use of the outdoor dining area to 11:00 p.m. will lessen concerns related to the introduction of dancing and the increased noise levels that it generates. The report from the Police Department is attached for the Commission's information (Attachment PC11).

In addition, the Police Department has recommended conditions of approval that include a requirement for a security plan, licensed security personnel when live entertainment or dancing is provided, and employee training in the service of alcoholic beverages. It is anticipated that the presence of security personnel and the employee training will alleviate Police Department concerns and will also reduce incidents that cause a drain on police resources in the vicinity. These conditions have been incorporated into the draft resolution (Attachment PC 1).

Hours of Operation

The applicant requests to change the restaurant opening hour from 11:00 a.m. to 10:00 a.m., to accommodate Sunday Brunch and occasional private brunch reservations, and establish the closing hour of 2:00 a.m., daily. Use Permit No. 3065 does not specify hours of operation for the restaurant, however, the 2:00 a.m. closing hour is currently regulated by the Department of Alcoholic Beverage Control (ABC). The applicant also requests to extend the hours of the outdoor dining area, change the opening hour from 11:00 a.m. to 10:00 a.m., daily; and the closing hour from 11:00 p.m. to 2:00 a.m., daily. Staff has no objections with the proposed extension of the opening hour, since ambient noise levels are higher during the daytime hours and noise impacts and complaints have not been received during those hours. However, the proposed extension of the closing hour for the outdoor dining area, if allowed in conjunction with the live entertainment and dancing, will adversely impact the neighboring properties and residential occupants that have raised objections and complaints. Therefore, staff recommends that the closing hour remain at 11:00 p.m. for the outdoor dining area as the only means to minimize the impact on neighbors.

Should the Planning Commission approve the application, the applicant would be required to obtain an Operator License from the Police Department. The Operator License should provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment, and will provide the Police Department with a means to modify, suspend, or revoke the operator's ability to maintain late-hour operations. Many of the conditions that will be included in the Operator's License will be the same conditions imposed by the use permit. The Operator's License is a tool that the Police Department can utilize to enforce the conditions of approval of the use permit.

Pursuant to Section 20.48.090 of the Zoning Code, the Planning Commission must consider the following potential impacts upon adjacent or nearby uses when reviewing an application to allow late-hour operations and outdoor dining:

1. *Noise from music, dancing, and voices associated with allowed outdoor uses and activities;*
2. *High levels of lighting and illumination;*
3. *Increased pedestrian and vehicular traffic activity during late and early morning hours;*
4. *Increased trash and recycling collection activities;*
5. *Occupancy loads of the use; and*
6. *Any other factors that may affect adjacent or nearby uses.*

As the Police Department report indicates, reports of noise related complaints are already experienced by residents in the neighborhood. Although, not all noise complaints can be definitively attributed to Woody's Wharf, since the Commonwealth Lounge to the north may also contribute to the noise impacts. The possibility that noise impacts to the surrounding area will be further compounded if the proposed change in operation is approved is highly anticipated. However, if the facility conformed to the current approval, there would be no appreciable increase in noise impacts. Staff has also received correspondence from residents that live in the neighborhood raising concerns about the proposed change in hours and the operation in general. That correspondence is attached for the Commission's information and consideration (Attachment PC12).

The proposed hours of the outdoor dining area to 2:00 a.m., if approved, will lengthen the amount of time that the noise resulting from dancing and live entertainment activities will be exposed to the outdoor dining area caused by patrons opening and closing the doors between the main dining room and the outdoor dining area. This traffic between areas after 11:00 p.m. (current required closing hour) and up to 2:00 a.m. (proposed extended closing hour) will adversely affect the neighboring properties; and can only be mitigated by the construction of noise abatement structures or barriers or a restriction on the hours of use. Therefore, staff recommends that the extension of the closing hour be denied and that the use of the outdoor dining area cease at 11:00 p.m. A condition of approval to that effect is included in the resolution.

The proposed use will not necessitate high levels of lighting or illumination and any outdoor lighting must conform to Zoning Code Section 20.30.070 (Outdoor Lighting). A temporary increase in traffic during late and early morning hours on weekends is expected along Newport Boulevard; however, this portion of roadway is not a major residential road, so disturbances to residents related to traffic are not expected to occur.

Because the land use and zoning allow for mixed use development and an approved mixed use development at the future South Coast Shipyard project, there will be additional residential units in close proximity to the project site, within 100 feet to the south of the subject property. Therefore, staff maintains the recommendation to limit the

hours of operation of the outdoor dining area to 11:00 p.m., daily, is necessary and warranted.

Outdoor Dining

The outdoor dining area is located outside of the main dining room of the restaurant and measures 709 square feet. The approved outdoor dining area plans show tables and seating for 66 persons. The removal of a portion of the tables and chairs as proposed will provide standing area for patrons of approximately 400 square feet and will result in an increase in the number of patrons that will occupy the space. As stated previously, the increase in the number of patrons will increase ambient noise levels of patio area and increase the number of patrons and employees entering and exiting the building. Therefore, staff recommends the tables and chairs of the outdoor dining area not be allowed to be removed and that the number remain at 66 seats, as currently authorized, to prevent any increase in the existing ambient noise levels.

Parking

The current parking requirement for Woody's Wharf is 40 parking spaces which are currently provided by 26 on-site spaces, the payment for 10 in lieu parking spaces, and the credit of four spaces for the boat docks. Six of the on-site spaces are tandem spaces approved with valet parking plan. The applicant proposes to utilize the valet parking service on an as-needed basis (to satisfy peak demand, special events, and holidays) and when dancing and/or live entertainment occurs. The Public Works Department has no objection to the valet parking plan as previously approved and depicted on the plans submitted.

Although, the net public area of the establishment will remain the same, parking demand will increase if dancing is permitted. The parking standards for food uses range from one space per 30 to 50 square feet of net public area, depending on the operation of the facility. Therefore the amount of parking required can range between 32 and 53 spaces, respectively. The table below shows how the parking requirements and available parking are affected by the proposed change to valet parking service, dancing and live entertainment activities.

Parking Location	Current Operation (1/40)	No Valet Parking Provided	Valet Parking and Dancing/Live Entertainment @1/35 s.f.
On-site	20	20	20
On-site Tandem – Valet Service	6	0	6
In-lieu	10	10	10
Boat Dock Credit	4	4	4
TOTAL ALLOCATED	40	34	40
REQUIRED	40	40	46
Deficit/Surplus	0	-6	-6

Staff is of the opinion that a revised parking requirement of one parking space per 35 square feet of NPA, 46 spaces, is appropriate in this case. The operation as proposed will result in a deficit of 6 spaces during the daytime and 6 spaces during nighttime with dancing and/or live entertainment with valet parking service provided. However, during the daytime hours, staff has observed that the restaurant is not operating at full capacity and the municipal parking lot across the street with more than 60 metered parking spaces is also available. Therefore, the provision of a full-time valet parking service during the day is not justified and a waiver of that portion of the parking requirement is appropriate.

During the nighttime operation, the restaurant will provide the valet parking service and the increased parking demand will result in a deficit of 6 spaces. However, it should also be noted that the municipal parking lot across the street with more than 60 metered parking spaces is also available and that meters are not in operation after 6:00 p.m., daily. Therefore, based on the reasons and information presented and the proximity of municipal parking lots across the street, staff believes a waiver of a portion of the on-site parking requirement is appropriate in this case.

Food Service

Staff became aware that the kitchen of the restaurant currently closes at approximately 10:00 p.m., daily. Staff discussed this issue with the applicant and informed them that a condition of approval has been included requiring that food service remain available during all hours of the restaurant operation. The applicant indicates a reduced menu of appetizers and side dishes will be offered later in the evening, consistent with the general practice of other restaurants in the area. This approach would be consistent with the condition of approval.

Combining of Lots

The applicant explored enclosing the outdoor area to minimize noise impacts to surrounding uses. To do so, however, would require the enclosure to cross property, or lot lines. The Subdivision Code Section 19.04.035 of the Newport Beach Municipal Code (NBMC) states that "No person shall develop any structure including, but not limited to, a principal or accessory structure across a lot line." Staff has no means, within the Code as written, of approving the issuance of any permits to add to the existing building or enclose the outdoor dining area, without the combining of the lots into a single parcel of land. The property owner, who is different from the current operators of Woody's Wharf, will not agree to the combining of the lots. The disagreement between the operator and the property owner to combine the lots is not an issue that the Planning Commission can resolve.

The Subdivision Code (Title 19 of the NBMC) provides no procedure or variance to allow staff or the Planning Commission to grant relief from the requirement to combine. There are provisions to allow the waiver of the requirement to file a parcel map, but only in favor of the approval of a lot line adjustment/lot merger or the processing of a

certificate of compliance. Both of those procedures provide the same result as a parcel map (combining the lots into a single parcel). However, once either is approved and recorded, it can only be undone or rescinded by the filing and recordation of a parcel map. Therefore, the property owner is not amenable to perform any of those processes to combine and wishes to maintain the underlying lot lines as currently exist.

Use Permit Findings

Pursuant to Section 20.52.020.F of the Zoning Code, the Planning Commission must make the following findings in order to approve a conditional use permit. Each finding is detailed in the attached draft resolution (Attachment PC 1):

- 1. The use is consistent with the General Plan and any applicable Specific Plan;*

The Mixed-Use Water Related (MU-W2 and MU-W) land use designations of the General Plan and Coastal Land Use Plan are intended to encourage water related uses intermixed with general commercial, visitor-serving commercial and residential uses. The operation of a "Food Service, Late Hours" use with alcoholic beverage sales is consistent with the purpose and intent of this land use designation and complementary to the surrounding residential uses. The facility is not located in a specific plan area.

- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*

The use is also consistent with the Mixed-Use Water Related (MU-W2) Zoning District. The MU-W2 district applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor serving commercial and residential dwelling units on the upper floors. Food Service uses can be expected to be found in this area and similar locations and are complementary to the surrounding commercial and residential uses.

- 3. The design, location, size, operating characteristics of the use are compatible with the allowed uses in the vicinity;*

The existing restaurant, with the proposed conditions of approval on the operational changes of the proposed project will generally comply with Zoning Code standards for eating and drinking establishments. The use of valet parking is not to be changed, except during the daytime operation when parking demand does not warrant it, but will be provided at all times during evening hours and when dancing, if approved, or live entertainment are provided. There are no exterior changes proposed to the outside of the building. This finding cannot be made since the proposed change in the operation to increase the hours of the use of the outdoor dining area will result in increased noise impacts on the neighboring properties and residents into the late hours after 11:00 p.m., is not compatible with the allowed uses in the vicinity.

4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*

The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses.

5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

This is an existing eating and drinking establishment that has existed in this location since the 1960's. The project site has proven to be physically suitable in size to accommodate the restaurant use and the outdoor dining area. The authorized hours of operation to limit the use of the outdoor dining area to 11:00 p.m. were imposed to limit the potential noise impacts on the surrounding uses and resident in the vicinity. However, the restaurant has operated the outdoor dining area beyond the approved 11:00 p.m. closing hour which has generated complaints from the residents in the vicinity and required that the Police respond to those complaints. Therefore, this finding cannot be made in conjunction with the request to increase the closing hour of the outdoor dining area, since use of the outdoor dining after 11:00 p.m. has proven to be detrimental to persons residing in the neighborhood.

The project has been reviewed and conditioned to ensure that potential conflicts with the surrounding land uses are minimized to the extent possible to maintain a healthy environment for both residents and businesses. Adequate parking will be provided for the proposed operation at all times of the day, with a deficit of 6 spaces during daytime and nighttime operations. The use of the outdoor dining area will cease by 11:00 p.m., daily, as currently authorized. To ensure that the interior operational changes do not create a detrimental impact during late hours, the operator will be required to secure an Operator License and will be required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance to areas surrounding the establishment and adjacent properties during business hours. Should the operator be unable to abide by the conditions of approval or prevent objectionable conditions from occurring, the Police Department will have the authority to modify, suspend, or revoke the operator's ability to maintain late-hour operations.

Summary

The restaurant has operated beyond their City approvals by offering patron dancing and not closing the outdoor dining area by 11:00 p.m. As stated above and in correspondences, the restaurant operation has generated a significant amount of complaints related to noise. Staff feels the operator's compliance with closing the outdoor dining area no later than 11:00 p.m., maintaining no more than 66 seats in the

outdoor dining area, and requiring all doors and windows to be closed will reduce the noise impacts on the surrounding area.

Staff recommends Planning Commission adopt the draft resolution approving Use Permit No. UP2011-010 (PA2011-055), to allow:

- the introduction of patron dancing within the interior of the restaurant;
- extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.;
- the use of the valet parking on an as-needed basis and when dancing and live entertainment are provided; and
- a waiver of up to 6 parking spaces that results from the addition of patron dancing and eliminating valet parking service during the day.

But denying that portion of the application to allow changes to the use of the outdoor dining area that proposes:

- the removal of tables and chairs within the outdoor dining area; and
- the extension of the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.

Alternatives

The Planning Commission may also modify that resolution to authorize changes to the recommended action or continue this public hearing to allow the applicant additional time to resolve issues that have been raised at the public hearing.


Environmental Review

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities).

Public Notice

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:


Javier S. Garcia, AICP,
Senior Planner

Submitted by:


Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution for Approval with Findings and Conditions
- PC 2 Applicant's Use Permit Request and Justification Letter
- PC 3 Applicant's Response to Proposed Conditions of Approval
- PC 4 Excerpt of Planning Commission Minutes, dated November 10, 1983 with Plans
- PC 5 Excerpt of Planning Commission Minutes, dated February 4, 1988 with Plans
- PC 6 Excerpt of Planning Commission Minutes, dated March 24, 1988 with Plans
- PC 7 Outdoor Dining Permit No. 1, dated October 4, 1995 with Plans
- PC 8 Live Entertainment Permit, Woody's Wharf Restaurant
- PC 9 Proposed Late-Hour Floor Plan
- PC 10 City Correspondence dated August 13, 2010 and January 19, 2012
- PC 11 Police Department Recommendation and Alcohol Related Statistics
- PC 12 Correspondence and Letters
- PC 13 Project Plans- Site Plan and Floor Plan

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ITEM NO. 5 Woody's Wharf Use Permit (PA2011-055)
Site Location: 2318 Newport Boulevard

Senior Planner Javier S. Garcia presented details of the report addressing consolidation of previous conditions of approval, removal of duplicate conditions or those that no longer apply and inclusion of new conditions of approval. He addressed location, details of the requests, setbacks, parking lot, existing conditions, surrounding properties, nearest residential district, spaces for boats, approval of the original Use Permit and allowances as well as subsequent amendments and permits. Mr. Garcia addressed patron dancing, extensions of opening and closing hours, valet parking, site plan, outdoor dining area, bar, main entrance and access walkway and doors.

Mr. Garcia addressed removal of tables and chairs to allow for dancing, extension of opening and closing hours, ambient noise levels, closure of outdoor dining area and issues related to use of the patio beyond 11:00 p.m. He stated no parking issues during the day, valet parking service during night-time use and availability of municipal parking lots for additional parking during evenings. He presented details of staff recommendations as presented in the report.

Chair Toerge invited the applicant to address the Commission.

Mark Serventi, Applicant and Co-owner of the restaurant, thanked staff and the Commission and introduced others on his team. He noted that the facility is a good neighbor and has made efforts to mitigate problems in the area. Mr. Serventi addressed their request noting that they are not asking for anything new and referenced a request for amending the conditions of approval. He stated that he understands the concerns voiced by residents and listed actions to resolve some of the issues and their willingness to work with staff and residents. Mr. Serventi referenced Police reports noting there was only one complaint reported in many years of operation. He reported actions to minimize noise impacts, meetings with Code Enforcement, self-imposed curfews and the possibility of hiring a security guard to monitor the adjacent condominiums. Mr. Serventi addressed construction of a retractable roof to minimize noise and further plans to minimize noise impacts.

Chair Toerge noted that the issue of the retractable roof is not being addressed at this time.

Mr. Serventi asked for the City's help in mitigating noise impacts by allowing an enclosure and the possibility of conducting sound readings and studies.

Marty Potts, Entitlement Consultant, referenced a handout, distributed under separate cover, asking for amendments to the conditions of approval. He agreed with the need for a new operator's license permit and expressed concerns that the Code indicates that the conditions could be amended to be more restrictive and that the final decision maker is the City Manager. He requested the ability to come back to the Planning Commission instead of the City Manager on additional issues. In addition, he asked that they be allowed to remove patio chairs and tables after 10:00 p.m. Regarding a dance permit, he felt that it is not applicable in this instance and stated that the owners are accepting to prepare a security plan for the Police Department's approval. Regarding the latter, he indicated wanting to make sure that the process is consistent with the use permit conditions approved by the Commission. Mr. Potts requested the allowance for events to be conducted by outside promoters. He reported that there is a cover charge in the evenings and asked that the Commission consider the condition or modification.

Roger Jon Diamond focused on the claim by opponents of the application regarding noise being generated by the restaurant. He noted the existence of a restaurant and a bar between Woody's Wharf and the existing condominiums and stressed that the source of the noise is not Woody's Wharf. He felt that there is no evidence that Woody's is the source of the noise and stressed the need for a

mechanism to establish the truth or the falsity of the accusations. Mr. Diamond addressed the importance of supporting small businesses and asked that the Commission approve the application with the modifications that are needed to make sure that the business does not have to close at 11:00 p.m. He noted that there are residential properties to the west of Woody's that have made no complaints at all.

Interested parties were invited to address the Commission on this item.

Denver Andrews, Legal Counsel to the 28th Street Marina Association, noted a direct line of sight to the Woody's Wharf patio. He emphasized that the homeowners in the Association realize, appreciate and respect the fact that they are in a mixed-use area. Mr. Andrews noted that people purchased their homes in the neighborhood with expectations that there would be conditions placed upon adjacent businesses that would respect the rights of those residing in the neighborhood. He felt that the subject restaurant has not demonstrated respect for the nearby residential neighborhood and that the business has repeatedly violated and failed to operate in accordance with its permits, particularly with respect to the use of the outdoor patio. Mr. Andrews stated that the Association is not asking the restaurant to close, but rather that the outdoor patio be closed at 11:00 p.m. and that it be enforced. He requested that the Commission deny the application of Woody's Wharf to extend the use of the outdoor patio beyond 11:00 p.m.

Jack Gleason, Director of the 28th Street Marina Association, voiced opposition to the staff report related to clarification of condition number 3. He suggested including that all service and occupancy of the outdoor dining area cease at 11:00 p.m. daily. He indicated opposition to the dancing, referenced denial of a café dancing permit and agreed with a memo from the Police Department regarding their projection that the applicant's proposal will result in an increase in police-related activities and calls for police services and their recommendation to not approve the application. He asked that regulations in place be upheld. Mr. Gleason felt that bad behavior should not be rewarded.

Joe Balzar reports that he resides closest to the subject property and is not shy about complaining about noise. He stated that there is noise on the street but that it is not coming from Woody's. He suggested that the Commission seek proof as to the source of the noise and spoke in support of the application.

Brian Serra indicated that he would oppose the waiver of any of the parking spaces, commented on the noise and felt that current problems are endemic not just to Woody's, but all of the restaurants/bars in the area. He opposed the extension of operating hours.

In reply to Vice Chair Hillgren's inquiry, Mr. Serra addressed valet parking at night and noted that daytime parking is not an issue.

Kent Stoddard reported that noise from Woody's is extensive and routinely prevents him from sleeping. He stated opposition to the extension of patio hours past 11:00 p.m. and allowing dancing. He asked that the outdoor dining area shall be closed at 11:00 p.m. daily and not be used or occupied after 11:00 p.m. He distinguished between the noise from the Commonwealth restaurant and Woody's and addressed the number of calls for police services at Woody's and recommendations by the Police Department to deny the application.

Laith Ezzet asked for the opportunity to sleep and opposed allowing dancing in the facility. He addressed the use of the patio and the inability to lock the doors that go out into the patio. He reported that problems have existed even when the Commonwealth restaurant has been shut down over the years.

Dennis Halloran referenced recent actions by the Laguna Beach Planning Commission, reported experience with mixed-use areas and stated that Woody's has recently become a nightclub which is inappropriate in a mixed-use area. He agreed with the need to clearly specify use and closure of the outdoor dining area and encouraged the Commission to deny the application.

Norman Einhorn spoke in opposition to the application and noted that he has made many complaints throughout the years regarding the operation of Woody's. He stated that current laws are not being enforced and that they should not be rewarded. He asked that the Commission deny the application.

Christopher Rolfs spoke in opposition to the application and addressed noise related to Woody's Wharf. He thanked the Commission for making the neighborhood better, but felt that the situation has become worse throughout the years.

Joe Reiss expressed concerns that the owners of Woody's Wharf have operated the business while multiple violations have occurred. He spoke in opposition to the application and noted that the issue is one of quality of life. He encouraged the Commission to accept the recommendations from the Police Department and noted the high concentration of alcohol-related uses in the area. In addition, he addressed problems with parking and lack of parking and noise studies.

There being no others wishing to address the Commission, Chair Toerge closed the Public Hearing.

In response to an inquiry from Chair Toerge, Mr. Garcia reported that Woody's Wharf has always been a restaurant.

In response to Vice Chair Hillgren's inquiry, Mr. Garcia addressed the possibility of putting a roof over the patio and the prohibition of placing additional structures across the lot line, without consolidating the lots. Mr. Garcia reported that the Code does not require noise or parking studies be submitted for this type of change since it is an existing use.

Commissioner Tucker inquired regarding the possibility of a "lot-tie agreement" to allow placement of a patio cover structure. He stated that such an agreement would allow the lots to be treated as one while the patio cover was in place.

Ms. Brandt noted the two different Codes being considered including the State Building Code and the City's Municipal Code requirements. She addressed steps relative to certificates of compliance and the need to subdivide once conditions would change.

Commissioner Tucker noted that the noise issue is a Code Enforcement issue and did not think that it was an item for the Commission to approve or not approve. He commented that he would not support expanding the use to include dancing nor the operation of the patio beyond 11:00 p.m.

Mr. Garcia addressed allowances related to the current approval.

Community Development Deputy Directory Brenda Wisneski explained that the noise issue would be a Code Enforcement issue regardless of the Planning Commission's decisions.

Commissioner Tucker referenced the Police Department recommendations and questioned why staff would find that dancing would be acceptable.

Mr. Garcia addressed limitations of the use of outdoor dining and felt that allowing dancing would allow for private parties/receptions/fundraising events and that limiting the dancing to the interior would not impact the neighbors.

Chair Toerge commented on conflicts with the previous use of the site and the lack of a noise study. He noted that the facility is approved as a restaurant but that when tables and chairs are removed and cover charges are implemented, these are not the activities of a restaurant. He stated that he would be inclined to deny the application but suggested that the applicant consider continuing the item while they try to conduct a noise study and enclosing the roof. He highlighted the proposed changes to the conditions.

Commissioner Brown agreed with Chair Toerge's comments. He asked whether dancing is permitted with the current permit and Mr. Garcia reported that it is not. Commissioner Brown felt that it is unfortunate that the noise issue cannot be mitigated with a patio cover and expressed concerns that the operation is migrating from operation of a restaurant to a night club use.

Commissioner Kramer suggested continuing the item in order to give the applicant the opportunity to prepare a better case regarding noise evidence and possible solutions with respect to a cover. He stated that he is in favor of the application and felt that he is not completely satisfied with the solutions presented at this time.

Commissioner Ameri agreed with Commissioner Kramer's comments and addressed compliance issues involved where the applicant has been in violation of what they are allowed to do. He stressed the need to comply with the Code and felt that many of the residents' concerns may not be directly related with dancing, but rather the whole structure of the operation of the facility. He agreed with continuing the item to allow the applicant to develop solutions acceptable to all sides.

Vice Chair Hillgren agreed with allowing opportunities to modify the uses in order to work with the neighbors. He addressed incompatibility with the way the property is used or has been used. He felt that a thorough review has not been conducted and stated the need for the proper studies to ensure compliance.

Motion made by Chair Toerge and seconded by Vice Chair Hillgren, to adopt Resolution No. 1898 approving Conditional Use Permit No. UP2011-010 to allow changes to the operation of the restaurant that includes: extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.; the use of the valet parking on an as-needed basis; a waiver for a portion of the required parking; but denying the introduction of patron dancing; denying the removal of tables and chairs within the outdoor dining area; and denying the extension of the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m.

Chair Toerge invited the applicant to address the Commission.

Mr. Serventi reported that, per City Code, a dance permit is not required when an admission fee is charged and that is why dancing has occurred. He noted his willingness to work with staff and residents to supply the necessary noise and parking studies to generate mutually-agreeable solutions, and asked for a continuance.

Chair Toerge closed the Public Hearing.

Commissioner Brown questioned how the issues of noncompliance be addressed currently if the item is continued.

Chair Toerge noted that noncompliance with current approvals and conditions is a Code Enforcement issue.

Commissioner Tucker addressed the dancing issue noting that it changes the character of the facility to a night club. He stated that a continuance will not change his mind on the matter.

Substitute Motion made by Commissioner Kramer and seconded by Commissioner Ameri, to continue the item to the January 17, 2013, meeting of the Planning Commission as requested by the applicant.

Commissioner Kramer commented on the possibility of allowing the applicant to present more evidence, stated that he does not have an issue with allowing dancing and that there should be a modification of the establishment of a restaurant to a bar.

Commissioner Ameri suggested that the Association designate a person to contact staff and work with the owners to ensure that when the item returns to the Planning Commission, tangible solutions can be discussed.

Chair Toerge felt that the only way the project can move forward is with some type of enclosure and stated that he will not support the continuance.

Chair Toerge called for the question.

The substitute motion failed 3 – 4.

AYES:	Ameri, Brown, and Kramer
NOES:	Hillgren, Myers, Toerge and Tucker
ABSTENTIONS:	None
ABSENT (Excused):	None

Chair Toerge restated the original motion.

Commissioner Tucker recommended including clarification regarding all service and occupancy of the outdoor dining area shall cease after 11:00 p.m.

Discussion followed regarding modifications to the findings in order to be consistent with the motion for approval.

Chair Toerge agreed to include Commissioner Tucker's recommendation in the motion.

Vice Chair Hillgren asked whether the Chair would consider different hours of closure for Friday and Saturday evening for the outdoor patio.

Chair Toerge indicated that he would not.

Substitute Motion by Commissioner Kramer and seconded by Vice Chair Hillgren, to adopt Resolution No. 1898 approving Conditional Use Permit No. UP2011-010 to allow changes to the operation of the restaurant that includes: extending the opening hour of the restaurant and outdoor dining area from 11:00 a.m. to 10:00 a.m.; the use of the valet parking on an as-needed basis; a waiver for a portion of the required parking; but denying the introduction of patron dancing; denying the removal of tables and chairs within the outdoor dining area; and denying the extension of the closing hour of the outdoor dining area from 11:00 p.m. to 2:00 a.m., clarifying that all service and occupancy of the outdoor dining area shall cease after 11:00 p.m. except on Friday and Saturday nights which would be extended to 12:00 midnight.

Assistant City Attorney Mulvihill requested clarification from Vice Chair Hillgren.

Commissioner Tucker seconded Chair Toerge's original motion to include clarification regarding all service and occupancy of the outdoor dining area ceasing after 11:00 p.m.

Commissioner Myers clarified that dancing will not be allowed. He felt that by eliminating dancing, the nature of the business is being changed and indicated support of staff's original recommendation. He suggested looking at the original recommendation with limits on the use and operation of the outdoor dining patio.

Commissioner Ameri reiterated his support for continuance and expressed hesitancy in taking away something that is already occurring at the establishment.

Substitute Substitute Motion by Commissioner Ameri to approve staff recommendations as presented without further recommendations. The Substitute Substitute Motion died for lack of a second.

Commissioner Tucker noted that dancing is not permitted currently and has not been "grandfathered".

Motion by Commissioner Myers and seconded by Commissioner Ameri, and failed 3 – 4, to reconsider continuing the item to the Planning Commission meeting of January 17, 2013.

AYES: Ameri, Myers, and Kramer
NOES: Brown, Hillgren, Toerge and Tucker
ABSTENTIONS: None
ABSENT (Excused): None

In accordance with direction from Assistant City Counsel Mulvihill, Commissioner Kramer indicated that he would maintain his substitute motion and Vice Chair Hillgren affirmed so as well.

Chair Toerge called for the question on the substitute motion.

The substitute motion carried 4 – 3.

AYES: Brown, Hillgren, Kramer and Myers
NOES: Ameri, Toerge and Tucker
ABSTENTIONS: None
ABSENT (Excused): None

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION - None

ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Ms. Brandt reported that there is no second scheduled meeting for the month of November because of the Thanksgiving Holiday. The next regularly scheduled meeting of the Planning Commission will be on December 6, 2012, where the Uptown Village Project will be presented as well as a new development in Corona del Mar as well as a use permit. Staff anticipates that it will be a long agenda and Ms. Brandt suggested starting the meeting at 5:30 p.m. rather than 6:30 p.m. She will contact Members individually regarding the matter.

Attachment No. PC 5

Police Department Recommendation and
Alcohol Related Statistics

**City of Newport Beach
Police Department**

M e m o r a n d u m

July 29, 2013

TO: Brenda Wisneski, Planning Deputy Director

FROM: Detective Randy Parker

SUBJECT: Woody's Wharf, 2318 Newport Blvd.
UP 2011-010 (PA2011-055).

At your request, the Police Department has reviewed the project application for *Woody's Wharf*, located at 2318 Newport Blvd, Newport Beach. Per the Project Description, the proposal is to allow the following changes in the operational characteristics of the existing restaurant in conjunction with the combining of the existing use permit and outdoor dining permit approvals: (1) Introduction of dancing within the interior of the facility and the addition of a dance floor area, and (2) Increase in the closing hour of use of the outdoor dining area from 11:00 p.m. to 2:00 a.m. to coincide with the closing hours of the restaurant. (3) The request to construct a "canopy" over an outdoor patio area. The request will also address changes to and the elimination of conditions of approval that are duplicative and/or no longer applicable or to clarify the intent or purpose.

The applicant currently has a Type 47 (General – Eating Place) license with the Department of Alcoholic Beverage Control.

I have included a report by Crime Analyst Caroline Staub that provides detailed statistical information related to calls for service in and around the applicant's place of business. This report indicates that this location is within an area where the number of crimes is at least 203% higher than the average of all reporting districts in the City. This location is within an RD that has 72 ABC licenses, which equals a per capita ratio of one license for every 44 residents. Additionally, this location is within an RD that is over the Orange County per capita average of ABC licenses.

Applicant History

Woody's Wharf has operated from their current location since the 1960's and offers a unique eating and drinking experience from a waterfront location facing the Newport Bay. Woody's Wharf once operated as a boat repair shop for local fisherman but continues to offer its patrons a traditional seaside village theme

consistent with the traditions of Newport Beach. The current owners are a group of friends that have known each other for over 25 years.

By all accounts, Woody's Wharf is a quality eating and drinking establishment that compliments the community of Newport Beach. It should be noted, however, that Woody's Wharf has generated numerous citizen complaints over the last several years reference the music and the crowd noise on the patio. Despite being made aware of the complaints, Woody's Wharf has exhibited a blatant pattern of violations related to the use of the outdoor patio after hours. Condition of Approval No. 3 of Outdoor Dining Permit No. 1 states:

"That the use of the outdoor patio shall cease at 11:00 p.m."

On October 12, 2010, NBPD Detective Bryan Moore prepared a memorandum in response to a request by Woody's Wharf to obtain a Café Dance Permit. His memorandum included the following information:

"It should also be noted that in November of 2009, the Police Department began receiving noise complaints (from nearby residents) reference the music and crowd noise on the outdoor patio of Woody's Wharf. Upon review of the use permit, the Planning Department determined that the outdoor patio was to be closed by 11:00 p.m."

On 11/20/2009, members of the Police Department and Planning Department met with the owners of Woody's Wharf to advise them of the complaints as well as the hours of operation for the outdoor patio."

Since that time, the Police Department has conducted four separate investigations which concluded that Woody's Wharf continued to violate the condition pertaining to the hours of operation for the outdoor patio. Additionally, other violations were observed including overcrowding, service of alcoholic beverages outside the licensed area and allowing dancing without a dance permit."

On January 19, 2012, Senior Planner Javier Garcia sent Woody's Wharf a "Notice of Violation-Final Warning" letter directing Woody's Wharf to comply with all current permits and approvals, including the 11:00 p.m. closing hour for the patio.

On 3/29/2012, a uniformed Newport Beach Police Officer conducted a bar check at Woody's Wharf at 2300 hours and observed the patio area to be open and was being utilized by approximately 70 patrons. The officer completed a report documenting his observations (DR# 12-2481).

On 5/10/2012, a meeting was held between owners of Woody's Wharf and representatives of various City departments, including Police, Planning and the

City Attorney's office. One of the topics discussed was the issue related to the use of the outdoor patio.

On June 1, 2012, Newport Beach Police Officers conducted a bar check at Woody's Wharf at 0030 hours and observed the patio area to be open and was being utilized by approximately 50 patrons. One of the officers completed a report documenting his observations (DR# 12-4401).

On March 28, 2013, Newport Beach Police Detectives conducted a bar check at Woody's Wharf at approximately 2345 hours and observed the patio area to be open and was being utilized by approximately 60-70 patrons. There were 10-20 patrons dancing in the cleared out area of the main dining area to music being provided by the D.J. Detectives left Woody's and walked across Newport Blvd. to the metered parking lot at 26th Street (approx. 40-50 yards from Woody's). The crowd noise as well as the noise from the D.J. (inside) was audible outside. Detectives completed a report documenting their observations (DR#13-2600).

On March 29, 2013, Newport Beach Police Detectives conducted a bar check at Woody's Wharf at approximately 2345 hours and observed the patio area to be open and was being utilized by approximately 60-75 patrons. Detectives completed a report documenting their observations (DR#13-2671).

Police Activities and Calls for Service Data (Woody's Wharf)

Between January 1, 2012 and July 22, 2013, 157 calls for service to Woody's Wharf have come in to the Police Department. The below information represents a portion of those calls which are pertinent to the application:

- 5 calls for service related to possible drunk drivers
- 32 calls for service related to fights/assaults
- 23 calls for service related to misc. disturbances
- 12 calls for service related to over-intoxicated persons
- 2 calls for service related to noise

*The above information is a cursory look at calls for service. The individual details of each event have not been investigated.

This information indicates that a significant amount of police resources were utilized to address incidents related to Woody's Wharf over the past year and seven months.

Recommendations

The Police Department has some significant concerns about the proposed changes in the operational characteristics at Woody's Wharf. Despite previous violations, Woody's Wharf has continued to display a disregard for the requirement that they close the outdoor patio at 11:00 pm. The Police Department feels that an increase in the closing hour of the outdoor patio from

11:00 p.m. to 2:00 a.m. will have a significant impact on noise with regard to the nearby residential areas. It is unknown if the addition of a "canopy" will conceal the noise to the inside of the establishment until sound attenuating walls have been installed and tested. The Police Department has reviewed the noise studies provided and understands that the development of a "canopy" and windshield "should" decrease the noise coming from Woody's.

Additionally, despite the applicant's best intentions, we know based on our local history that the combination of live entertainment and dancing often lead to a nightclub type business model; especially after 10 p.m. Even with stringent conditions in place it has been our experience (with past and present establishments) that these types of operations can become a drain on police resources and ultimately have a negative impact on the health, safety and welfare of the community.

The Police Department understands that there are several other contributing factors to the noise associated with a restaurant/bar setting which include: increased vehicular traffic, patrons talking loudly outside the premise and other crimes/disturbances associated with alcoholic beverage consumption. The Police Department is also aware that the American Junkie, which is adjacent to Woody's Wharf, is a contributing factor to the noise complaints generated by nearby residents. It should be noted that the Police Department has also received two (2) calls for service from citizens regarding loud music coming from the American Junkie that required action from the Police Department.

It is for the above reasons that we are projecting that the applicant's proposal will result in an increase in police related activities and calls for police services. The resources required to address these events would detract from our ability to provide police services to the other areas of the community and therefore, we cannot recommend this application for approval.

It should be noted that the proposed operation will offer alcoholic beverage service (for on-site consumption) in combination with food service, late hours, and live entertainment. As a result, the applicant/operator will be subject to an Operator's License issued by the Chief of Police.

Should this application be approved, the Police Department recommends the following conditions:

Signs and Displays

Any signs or displays would need to conform to City requirements. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.

Hours of Operation

The Police Department has no recommendations.

Security

The applicant shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department.

The procedures included in the plan and any recommendations made by the Police Department shall be implemented and adhered to for the life of the use permit.

Employee Training

Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.

Additional Comments

For the purposes of this application, staff may also want to consider establishing conditions that would require a Special Event Permit. A Special Event Permit may be required for any event or promotional activity outside the normal operational characteristics of the proposed operation. For example, events likely to attract large crowds, events for which an admission fee is charged, events that include any form of contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

Other Recommended Conditions

In addition, the Police Department has determined that the following conditions would be appropriate for the Conditional Use Permit for the business:

1. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a Use Permit.
2. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
3. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu.
4. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.

5. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
6. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
7. Strict adherence to maximum occupancy limits is required.
8. Bottle service shall be prohibited.
9. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
10. VIP passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order, or sale of drinks is prohibited.

If you have any questions, please contact me at (949) 644-3706.



Detective Randy Parker
Vice/Intelligence/ABC



Dale Johnson, Captain
Detective Division Commander



Chief Jay R. Johnson

NEWPORT BEACH POLICE DEPARTMENT

Crime Analysis Unit

870 Santa Barbara Drive · Newport Beach · CA 92660 · 949-644-3791



CRIME AND ALCOHOL-RELATED STATISTICS - 2012

Subject:	<u>Calls For Service</u>		<u>Crimes</u>		<u>Arrests</u>			<u>Citations</u>	<u>ABC Info</u>	
	Part I Crimes	Part II Crimes	Crime Rate	All Arrests	DUI	Public Intoxication	Liquor Law	Alcohol Related	Active Licenses	License Per Capita
2318 Newport Blvd	8	10	not applicable	7	1	5	0	0	1	not applicable
Subject RD: RD15	249	595	7,889.73	711	67	366	2	343	72	44
Adjacent RD: RD13	96	171	5,485.71	156	15	50	0	107	4	438
Adjacent RD: RD14	20	14	1,230.01	23	0	13	0	3	0	0
Adjacent RD: RD16	84	231	1,914.31	199	18	88	3	187	8	549
Newport Beach	2,332	3,585	2,731.45	3,280	446	856	14	1,079	394	217
California	1,128,845	not available	2,994.92	1,183,470	104,345	99,017	15,904	not available	44,536	836
National	10,266,737	not available	3,294.93	12,408,899	1,215,077	534,218	500,648	not available	not applicable	not applicable

Summary for Woody's Wharf at 2318 Newport Blvd (RD15)

In 2012, RD15 had a total of 844 reported crimes, compared to a city-wide reporting district average of 152 reported crimes. This reporting district is 692 crimes, or 455%, OVER the city-wide average.

The number of active ABC licenses in this RD is 72, which equals a per capita ratio of one license for every 44 residents. Orange County averages one license for every 504 residents and California averages one license for every 836 residents. This location is within an RD that is OVER the Orange County and OVER the California per capita averages of ABC licenses.

Notes:

Part I Crimes are the 8 most serious crimes as defined by the FBI Uniform Crime Report - Homicide, Rape, Robbery, Aggravated Assault, Burglary, Larceny-Theft, Auto Theft, and Arson. This report reflects City of Newport Beach data for calendar year 2012, which is the most current full-year data available. California and National figures are based on the 2011 Uniform Crime Report, which is the most recent edition. Crime Rate refers to the number of Part I Crimes per 100,000 people. Number of Active ABC Licenses is the total of all types of licenses known to the NBPDP as of the date of this document.

7/30/2013



Chief Jay R. Johnson

NEWPORT BEACH POLICE DEPARTMENT

Crime Analysis Unit

870 Santa Barbara Drive · Newport Beach · CA 92660 · 949-644-3791



CRIME AND ALCOHOL-RELATED STATISTICS - 2013 YTD

Subject:	Calls For Service		Crimes			Arrests			Citations		ABC Info	
	Part I Crimes	Part II Crimes	Crime Rate	All Arrests	DUI	Public Intoxication	Liquor Law	Alcohol Related	Active Licenses	License Per Capita		
2318 Newport Blvd	7	7	not applicable	2	0	2	0	1	1	not applicable		
Subject RD: RD15	147	313	4,657.79	360	32	162	4	209	72	44		
Adjacent RD: RD13	50	97	2,857.14	63	6	17	1	65	4	438		
Adjacent RD: RD14	10	12	615.01	5	0	3	0	1	0	0		
Adjacent RD: RD16	61	136	1,390.15	118	8	50	1	150	8	549		
Newport Beach	1,361	1,991	1,594.12	1,865	266	356	6	617	394	217		
California	1,128,845	not available	2,994.92	1,183,470	104,345	99,017	15,904	not available	44,536	836		
National	not available	not available	3,294.93	12,408,899	1,215,077	534,218	500,648	not available	not applicable	not applicable		

Summary for Woody's Wharf at 2318 Newport Blvd (RD15)

YTD 2013, RD15 had a total of 460 reported crimes, compared to a city-wide reporting district average of 152 reported crimes. This reporting district is 308 crimes, or 203%, OVER the city-wide average.

The number of active ABC licenses in this RD is 72, which equals a per capita ratio of one license for every 44 residents. Orange County averages one license for every 504 residents and California averages one license for every 836 residents. This location is within an RD that is OVER the Orange County and OVER the California per capita averages of ABC licenses.

Notes:

Part I Crimes are the 8 most serious crimes as defined by the FBI Uniform Crime Report - Homicide, Rape, Robbery, Aggravated Assault, Burglary, Larceny-Theft, Auto Theft, and Arson. This report reflects City of Newport Beach data for calendar year 2013 YTD, through July 22. California and National figures are based on the 2011 Uniform Crime Report, which is the most recent edition. Crime Rate refers to the number of Part I Crimes per 100,000 people. Number of Active ABC Licenses is the total of all types of licenses known to the NBPD as of the date of this document.

Additional Information

Highest Volume Crime in RD15
Petty Theft
Highest Volume Crime in RD13
Simple Assault
Highest Volume Crime in RD14
Burglary/Theft from Auto
Highest Volume Crime in RD16
Residential Burglary

Calls for Service at 2318 Newport Blvd	
911 HANGUP	1
BATTERY JUST OCC	4
BATTERY RPT	3
BEAT INFO	3
CITIZEN FLAG DOWN	1
CITIZEN/AGENCY ASSIST	3
DISTURBANCE DRUNK	1
DISTURBANCE MISC	1
DISTURBANCE URGENT	1
DRUNK DRIVER	2
DRUNK IN PUBLIC	1
GRAND THEFT RPT	1
KEEP THE PEACE	5
MEDICAL AID	1
MUNICIPAL CODE VIOLATIC	4
PATROL CHECK	3
PETTY THEFT RPT	5
PHYSICAL FIGHT	2
SUBJECT STOP	4
SURVEILLANCE	1
TRAFFIC STOP	5
UNKNOWN TROUBLE	2
VANDALISM RPT	3
VEHICLE STOP	7
VEHICLE THEFT RPT	1
WATER/SEWER PROBLEM	1
WELFARE CHECK	1
Grand Total	67

Additional Information

Highest Volume Crime in RD15
Petty Theft

Highest Volume Crime in RD13
Petty Theft

Highest Volume Crime in RD14
Burglary (Residential/Garage)

Highest Volume Crime in RD16
Petty Theft

Calls for Service at 2318 Newport Blvd			
23110	1	914T	1
242R	4	919	4
390	5	925SUB	1
415	7	925V	1
415390	6	928	1
415F	1	928LST	3
415M	1	929	3
415U	5	ALARM	1
459A	3	ASSIST	6
481J	1	BP	1
481O	1	CITZ	2
487R	1	FIGHT	5
488R	3	HAZARD	2
502	3	INFO	1
537J	1	MCVIOL	7
901T	1	MISC	1
902M	2	PC	2
909T	1	TRANS	1
Grand Total			90

Attachment No. PC 6

Noise Studies

Noise Measurement Survey
For
WOODY'S WHARF
CITY OF NEWPORT BEACH

Prepared For:

MPA, Inc.
4041 MacArthur Blvd., Suite 490
Newport Beach, CA 92660

Submitted By:

Mestre Greve Associates
Division of Landrum & Brown

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May 28, 2013
Project #539001

SCANNED

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1.0 EXISTING SETTING

1.1 Project Description

Woody's Wharf is a restaurant and bar located at 2318 Newport Boulevard in the City of Newport Beach (Exhibit 1). Live DJ music is played inside in the bar on Thursday, Friday, and Saturday nights. The bar room is open to an outside patio area via doors that are usually open, but remain closed after 10:00 p.m. other than when customers and employees are entering and exiting. The outside area is surrounded by a glass barrier approximately 6 feet high. The outside patio area is also covered for part of the year with a canvas canopy. The restaurant has a parking lot in the front of the building which contains a valet parking operation on the DJ music nights and at other times when peak demand warrant the valet. The restaurant also has boat docks in the front of the restaurant. This dock area is monitored by restaurant personnel and patrons are not allowed to hangout on the docks after 10 p.m. Guests with boats are permitted to dock their boats and enter the restaurant, but not to stay on their boats after 10 p.m. Outside on the south side of the restaurant is small smoking area where patrons can gather.

Another restaurant/bar is located directly north of Woody's Wharf called the Commonwealth. This restaurant also has music. Other sources of noise in the area are other restaurant operations, traffic on Newport Boulevard, traffic on more distant roadways, boats traveling up and down the channel in front of Woody's Wharf, people staying on boats docked in the area, aircraft, and police helicopters.

Complaints have been voiced regarding noise potentially from Woody's Wharf. The purpose of this study is to document the noise in the area and determine the contribution of Woody's Wharf to the overall noise levels experienced in the area. The focus of the monitoring is the mixed-use development to the north (refer to Exhibit 1). The second and third floors of the mixed-use development are residences, which are the source of the noise complaints. The Commonwealth, a single-family residence, and a small shipyard are located between the residences and Woody's Wharf.

Noise measurements were taken at six sites on Friday, December 21, 2012. The sites measured are shown on Exhibit 1. Woody's Wharf was in full operation during the measurements with a capacity crowd. This report presents the methodology and results of the noise measurement survey. Noise levels are contrasted and compared to the City's Noise Ordinance.

1.2 Background Information on Noise

1.2.1 Noise Criteria Background

Sound is technically described in terms of the loudness (amplitude) of the sound and frequency (pitch) of the sound. The standard unit of measurement of the loudness of sound is the decibel (dB). Decibels are based on the logarithmic scale. The logarithmic scale compresses the wide range in sound pressure levels to a more usable range of numbers in a manner similar to the Richter scale used to measure earthquakes. In terms of human response to noise, a sound 10 dB higher than another is judged to be twice as loud; and 20 dB higher four times as loud; and so forth. Everyday sounds normally range from 30 dB (very quiet) to 100 dB (very loud).

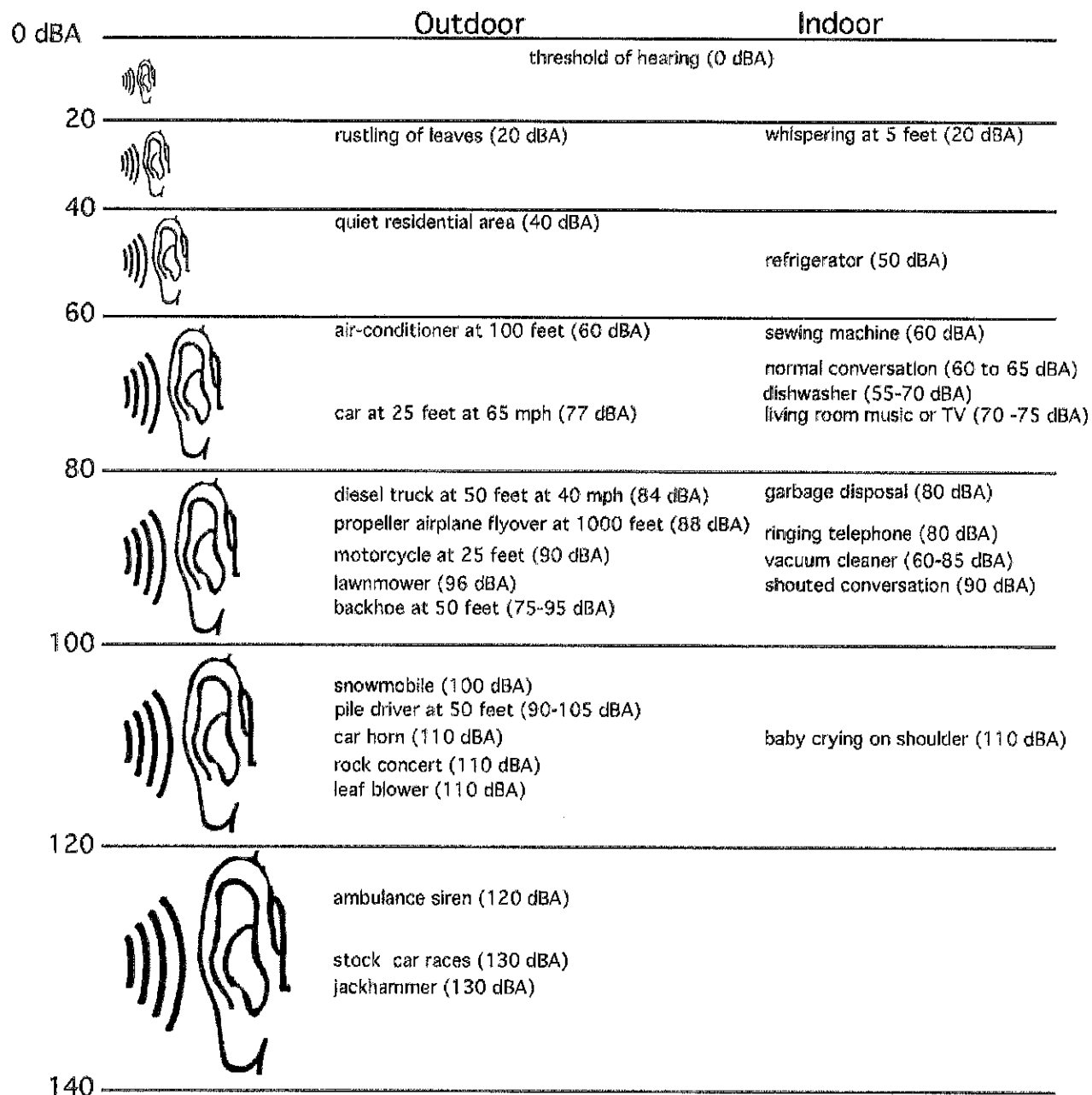


Since the human ear is not equally sensitive to sound at all frequencies, a special frequency-dependent rating scale has been devised to relate noise to human sensitivity. The A-weighted decibel scale (dBA) performs this compensation by discriminating against frequencies in a manner approximating the sensitivity of the human ear. Community noise levels are measured in terms of the "A-weighted decibel," abbreviated dBA. Exhibit 2 provides examples of various noises and their typical A-weighted noise level.

Sound levels decrease as a function of distance from the source as a result of wave divergence, atmospheric absorption and ground attenuation. As the sound wave form travels away from the source, the sound energy is dispersed over a greater area, thereby dispersing the sound power of the wave. Atmospheric absorption also influences the levels that are received by the observer. The greater the distance traveled, the greater the influence and the resultant fluctuations. The degree of absorption is a function of the frequency of the sound as well as the humidity and temperature of the air. Turbulence and gradients of wind, temperature and humidity also play a significant role in determining the degree of attenuation. Intervening topography can also have a substantial effect on the effective perceived noise levels.

Noise has been defined as unwanted sound and it is known to have several adverse effects on people. From these known effects of noise, criteria have been established to help protect the public health and safety and prevent disruption of certain human activities. This criteria is based on such known impacts of noise on people as hearing loss, speech interference, sleep interference, physiological responses and annoyance.

The description, analysis and reporting of community noise levels around communities is made difficult by the complexity of human response to noise and the myriad of noise metrics that have been developed for describing noise impacts. Each of these metrics attempts to quantify noise levels with respect to community response. Most of the metrics use the A-weighted noise level to quantify noise impacts on humans. A-weighting is a frequency weighting that accounts for human sensitivity to different frequencies.



Sources: League For The Hard Of Hearing, www.lhh.org
Handbook of Noise Control, McGraw Hill, Edited by Cyril Harris, 1979
 Measurements by Mestre Greve Associates

Exhibit 2

Typical Noise Levels

Several rating scales have been developed for measurement of community noise. These account for: (1) the parameters of noise that have been shown to contribute to the effects of noise on man, (2) the variety of noises found in the environment, (3) the variations in noise levels that occur as a person moves through the environment, and (4) the variations associated with the time of day. They are designed to account for the known health effects of noise on people described previously. Based on these effects, the observation has been made that the potential for a noise to impact people is dependent on the total acoustical energy content of the noise. A number of noise scales have been developed to account for this observation. The three noise scales commonly used in Newport Beach are the: Equivalent Noise Level (Leq), the maximum sound level (Lmax), and the Community Noise Equivalent Level (CNEL). These scales are described in the following paragraphs.

Leq is the sound level corresponding to a steady-state sound level containing the same total energy as a time-varying signal over a given sample period. Leq is the "energy" average noise level during the time period of the sample. Leq can be measured for any time period, but is typically measured for 1 hour. This 1-hour noise level can also be referred to as the Hourly Noise Level (HNL). It is the energy sum of all the events and background noise levels that occur during that time period.

Lmax is simply the maximum sound level that occurs in any given time period. The Lmax represents an instantaneous sound level, and there is no other second in a given time period which has a louder noise level.

CNEL is the predominant rating scale now in use in California for land use compatibility assessment. The CNEL scale represents a time weighted 24-hour average noise level based on the A-weighted decibel. Time weighted refers to the fact that noise that occurs during certain sensitive time periods is penalized for occurring at these times. The evening time period (7 p.m. to 10 p.m.) penalizes noises by 5 dBA, while nighttime (10 p.m. to 7 a.m.) noises are penalized by 10 dBA. These time periods and penalties were selected to reflect people's increased sensitivity to noise during these time periods. A CNEL noise level may be reported as a "CNEL of 60 dBA," "60 dBA CNEL," or simply "60 CNEL."

1.3 Noise Criteria

A noise ordinance is designed to control unnecessary, excessive and annoying sounds from one parcel of land impacting another parcel of land. Noise ordinance requirements cannot be applied to mobile noise sources when traveling on public roadways, because Federal and state laws preempt their control. However, a noise ordinance does apply to both mobile and stationary noise sources on private property. Newport Beach Ordinance Chapter 10.26 – Community Noise Control comprises the City's Noise Ordinance.

Table 1 presents the City of Newport Noise Ordinance standards. The City of Newport Beach noise criteria are given in terms of Leq and Lmax noise levels. The noise levels specified are

those that are not to be exceeded at a property from noise generated at a nearby property (Table 1). Noise levels are to be measured with A-weighting and a slow time response usually for a 15 minute period. Greater noise levels are permitted during the day (7 a.m. to 10 p.m.) as compared to the nighttime period (10 p.m. to 7 a.m.). These limits are increased if ambient noise levels are higher. The limits are essentially raised to the ambient levels.

Table 1 City Of Newport Beach Noise Ordinance Standards

Daytime		Nighttime	
Leq	Lmax	Leq	Lmax
<i>Zone I - Single, two, or multiple family residential</i>			
55 dBA	75 dBA	50 dBA	70 dBA
<i>Zone II - Commercial</i>			
65 dBA	85 dBA	60 dBA	80 dBA
<i>Zone III - Residential portions of mixed-use properties</i>			
60 dBA	80 dBA	50 dBA	70 dBA
<i>Zone IV - Industrial or manufacturing</i>			
70 dBA	90 dBA	70 dBA	90 dBA

The noise levels generated by Woody's Wharf or any other noise source on private property that impacts the residential portion of the mixed should not exceed those identified for Zone III. This would be measured at the property of the residential property (i.e., the receptor). Specifically at night the noise generated by Woody's Wharf or any other source should not exceed 50 dBA (Leq) or 70 dBA (Lmax) at the residences of the mixed-use development.

1.4 Noise Measurements

Noise levels were made at six sites (Exhibit 1) during the late evening of December 21, 2012 and early morning hours of December 22, 2012. Noise measurements at all sites were performed using Brüel & Kjær Model 2238 automated digital noise data acquisition system and sound meter mounted on a tripod. During the measurements a large windscreen covered the microphone to dampen out the effect of unwanted wind-generated noise, but has no effect on the sound measurement readings. Before and after the measurements were taken, a Brüel & Kjær 4231 calibrator with certification traceable to the National Institute of Standards and Technology was used to calibrate the sound meter to ensure that the measured sound level readings were accurate. Table 2 shows the results of the measurements. The measurements were made at a height of 5 feet except those at Sites 3 and 4. Sites 3 and 4 were measured at 15 feet high, which is the height of the second floor residences in the mixed-use development. The measurements are presented in roughly chronological order, and are grouped by the purpose of the measurement. Measurements at different sites had different purposes. Each of the measurements is discussed following the table.

Table 2 Event Noise Measurements (dBA)

Site	Start Time	End Time	Leq	Lmax	Purpose
Site 5	11:00 p.m.	11:15 p.m.	69.0	84.0	Parking lot
Site 6	11:00 p.m.	11:15 p.m.	66.5	80.8	Newport Boulevard
Site 1	12:03 a.m.	12:14 a.m.	60.0	64.6	Woody dock – deck open
Site 2	12:25 a.m.	12:35 a.m.	60.7	69.6	Commonwealth dock
Site 1	1:07 a.m.	1:17 a.m.	63.7	71.4	Woody dock – deck closed
Site 2	1:14 a.m.	1:24 a.m.	61.4	69.3	Commonwealth dock
Site 3	12:01 a.m.	12:16 a.m.	53.2	62.4	Mixed use residential
Site 4	12:24 a.m.	12:39 a.m.	52.1	66.3	Mixed use residential
Site 3	1:03 a.m.	1:18 a.m.	54.5	64.5	Mixed use residential
Site 4	1:25 a.m.	1:40 a.m.	48.2	59.2	Mixed use residential

Site 5: Edge of Woody's Wharf Parking Lot.

This monitoring location was at the edge of Woody's Wharf parking lot near Newport Boulevard. The primary noise at this site was the traffic on Newport Boulevard. However, the peak noise levels were from people walking by on the sidewalk and yelling. One person caused a peak noise level of 80 dBA while another person reached 83 dBA. One person walking through the parking lot and yelling also reached 83 dBA. It was observed that all cars were valeted parked at Woody's Wharf and that no patrons hung-out in the parking lot. During the quieter traffic times some music coming from the Commonwealth could be heard. No music from Woody's Wharf could be heard, but some conversation from the line waiting to get into Woody's Wharf could occasionally be heard.

Site 6: Near the northeast corner of Newport Boulevard and 26th Street.

This monitoring site was representative of the noise levels experienced by residences living along Newport Boulevard in the mixed-use development. The primary noise source was the traffic passing on Newport Boulevard. Cars passing by could reach 77 dBA. The Lmax of 80.8 was caused by a person yelling as he was walking on the sidewalk. General aviation aircraft was also heard during this period.

Sites 1 and 2: In the channel in front of Woody's Wharf and the Commonwealth.

Site 1 was just off the south dock of Woody's Wharf and Site 2 was just off of the north dock of the Commonwealth. The noise measurements were made in an electric boat (essentially quiet). The boat did drift a little bit and its location had to be corrected occasionally. The measurements at Sites 1 and 2 were first made during the midnight hour with the outside deck at Woody's Wharf open with what appeared to be a capacity crowd on the outside deck. Late in the midnight

hour the operators at Woody's Wharf closed the outside deck area, and once the deck was cleared, the measurements were repeated during the one o'clock hour at Sites 1 and 2. The purpose of the second set of measurements was to see if closing the outside deck would have any effect on the noise levels. The outside deck is connected to the main bar area via a pair of doors. The outside deck is surrounded by a glass wall approximately 6 feet high that acts as a noise barrier. The music is located in the bar area and can be heard in the outside deck area.

During the first set of noise measurements with the outside deck open for patrons, noise from Woody's Wharf could not be heard, but could be heard from the Commonwealth. At Site 1 music from the Commonwealth was commonly in the 60 to 62 dBA range with a strong bass component. An inspection of the Commonwealth was not made, however, it appeared that doors from the Commonwealth bar were open and led to the bar area at the club. When the music was quieter, conversation from both Woody's Wharf and the Commonwealth could be heard at Site 1. The conversation noise from Woody's Wharf appeared to be from the area on the south side of the building, and not the outside deck area. The measurement at Site 2 (with the outside deck open) had similar results to Site 1 in that music from the Commonwealth could be heard but music from Woody's Wharf was inaudible. During the midnight hour measurement at Site 2, an apparent patron came out onto the Commonwealth dock and was yelling. His yelling was responsible for the Lmax of 69.6 dBA.

During the second set of measurements at Sites 1 and 2, the outside patio area at Woody's Wharf was not in use and the doors connecting it to the bar room were closed. The noise levels at Site 1 were slightly higher during this second set of measurements. For example, the Leq noise levels at Site 1 went from 60.0 dBA when the outside deck was open to 63.7 dBA when the outside deck was closed. It appeared that the music was being played louder at the Commonwealth. Music from the Commonwealth was the dominant noise source. Conversation from the Commonwealth could be clearly heard and a minor amount of conversation from Woody's Wharf when the music was not being played. The results were similar at Site 2. The Leq noise levels increased from 60.7 dBA with the deck open to 61.4 dBA with the deck closed. Again, the music from the Commonwealth was the dominant noise source, and music from Woody's Wharf was inaudible. The Lmax noise level was again due to a person at the Commonwealth yelling. The average noise levels for the second measurement at Site 2 was also slightly louder than the first due to the music being played slightly louder at the Commonwealth. But this also clearly shows that the noise from the outside deck area is insignificant and not contributing adversely to overall community noise levels. During the measurement at Site 2, patrons boarded a boat at Woody's Wharf and motored away and it was not audible.

It should be noted that after each measurement set, the noise technician went inside Woody's Wharf to confirm that music was being playing at a level consistent throughout the night and in a manner typical for live DJ music (i.e., loud).

Sites 3 and 4: At the residences in the mixed-use development.

Site 3 is the most southerly of the two residential sites and is the closest to Woody's Wharf. During the first measurement the Leq was 53.2 dBA, which is slightly above the noise ordinance criteria of 50 dBA. (The Lmax ordinance criterion of 70 dBA was never exceeded at Sites 3 or 4.) During the first measurement at Site 3 voices from a boat docked at the Commonwealth

could clearly be heard and was generally in the range of 53 to 58 dBA but going up as high as 62 dBA. The "boom boom" from music could faintly be heard and was generally around 53 dBA. This music noise was from the Commonwealth, and operations at the Commonwealth were the reason that noise levels (Leq) were above 50 dBA at this location. During the first measurement set, the noise levels at Site 4 were similar to those at Site 3, but were due to different sources. At Site 4 distant traffic was audible an around 47 dBA. A boat passed by in the channel (62 dBA), a helicopter flew overhead (66 dBA), and general aviation aircraft (48 dBA) could be heard in the distance. Voices at the boat docks of the Commonwealth could be heard briefly and were about 50 dBA. Music was occasionally audible at Site 4. The noise ordinance level of 50 dBA was exceeded at Site 4 by 2.1 dB during this measurement period. However, it was clear that the noise was above 50 dBA due to the helicopter flyover and boat pass-by and not anything associated with the restaurants/bars in the area.

It should be noted that between Sites 3 and 4, music was being played inside one of the boats docked. The music could be clearly heard for about 70 feet in both directions along the boardwalk, but could not be heard at either Sites 3 or 4.

The measurements at Sites 3 and 4 were repeated with the outside deck at Woody's Wharf closed. The measurements at Site 3 were slightly higher during the second set of measurements. Observations during this period included music from a boat in the channel (57 dBA), voices on boat docked at Commonwealth (ranging from 61 to 64 dBA), music from boat or bars (54 dBA), low bass music most likely from the Commonwealth (54 dBA). The measurements at Site 4 were slightly lower during the second set of measurements. Observations during this period include unidentifiable music from the bar area (49 dBA) and activity from people on the boardwalk (47 to 54 dBA). In general, this was a very quiet period with the distant ocean waves and distant traffic being audible.

1.5 Summary and Conclusions for Monitoring Study

Below is a summary of pertinent observations and conclusions based on our noise measurements.

1. The parking lot is well managed at Woody's Wharf with valet parking and patrons not being allowed to loiter in the lot. (This is a common source of noise complaints from residents.)
2. Patrons coming and going from Woody's Wharf are no louder than people walking along the public sidewalk.
3. Noise levels along Newport Boulevard and experienced at residences along Newport Boulevard can be loud, specifically with average noise levels (Leq) being in the upper 60 dBA range.
4. Music from Woody's Wharf is well contained within the structure and the outside deck area with glass barrier. Music from Woody's Wharf was not audible.
5. Closing the outside deck at Woody's Wharf had no effect on the noise levels. This confirms that noise from the outside deck in surrounding areas is negligible. If the noise levels had gone down when the deck was closed, then that would be a strong indication that the noise from Woody's Wharf was a significant contributor to the outside noise levels. However, the noise levels actually went up slightly indicating that Woody's

Wharf was not a significant noise source and our observation was that the Commonwealth had increased the level of their music slightly.

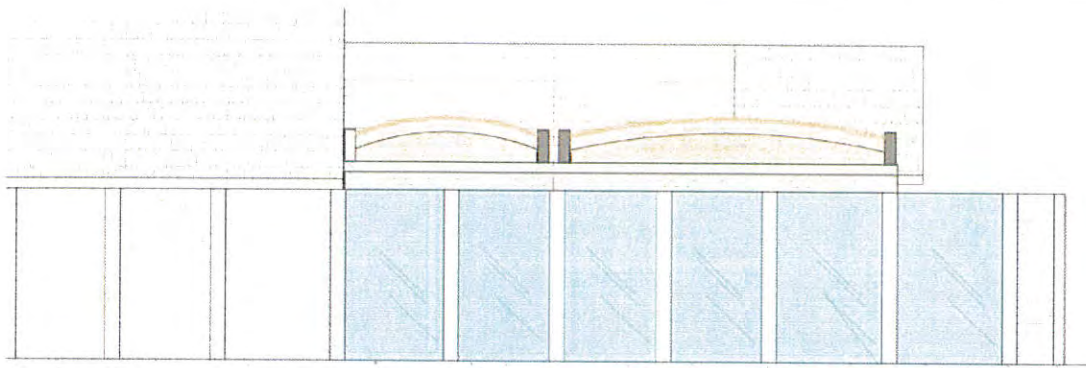
6. Music and noise from the docks of the Commonwealth are audible at the mixed-use residences. At times these sources of noise may exceed 50 dBA (Leq). At other times they may be audible, but not above 50 dBA (Leq).
7. The practice at Woody's Wharf of limiting dock use to patrons arriving and departing on boats (no loitering on boats) appears to be very beneficial to reducing noise levels in the surrounding areas and should be practiced at other bars and restaurants in the area.
8. No noise specific to Woody's Wharf was ever identified at the mixed-use residences. Noise from Woody's Wharf is not audible at the mixed-use residences. Noise from the Commonwealth, local roadways, distant roadways, and the surf were all heard. Noise from Woody's Wharf was not heard.
9. Noise levels at the mixed-use residences can be above 50 dBA (Leq) due to sources in the area other than bars and restaurants. Helicopter overflights, activities on the docks in front of the mixed-use area, activities on the boardwalk, and boats in the channel can all cause noise levels to go above 50 dBA (Leq).

1.6 Effects of New Patio Canopy and Windscreen

Woody's Wharf Restaurant is proposing to add a higher quality canopy than the current canvas canopy. The canvas canopy is used only during the wintertime. The new canopy would be a permanent installation and would incorporate retractable panels. A side view and top view of the canopy is shown in Exhibit 3. The canopy would be closed by 10 p.m. every evening. On colder days the canopy may not be opened or would be closed earlier than 10 p.m.

There are several features of the proposed construction that make this a superior option than the current system of a canvas canopy for part of the year and no patio cover for the remaining portion of the year. Each of the key features is discussed below.

Multi-layer polycarbonate canopy panels. Currently either no cover is in place or a canvas cover is in place. With no cover in place the noise reduction of the cover is obviously zero. Based on the weight of a typical canvas cover, we have calculated that the noise reduction of canvas is only 3 dB. That is the noise is 3 dB less directly above the canvas cover than directly below. The proposed canopy will be composed of a 5/8" thick multi-layer polycarbonate panel. The panels would be composed of 3 layers of polycarbonate that would be separated by two airspaces. The surface density of the panels would be approximately 0.57 lbs. per square foot. However, similar to double pane windows, the air spaces between the polycarbonate panels provide more noise reduction than would be indicated just by the weight. According to one website (<http://www.polycarbonatesheetsinindia.com/question.html>) the multi-layer system being proposed should provide about 21 dB of noise reduction. (Although noise reduction data for polycarbonate panels is scarce, this rating does appear to be consistent with other values reported.) Therefore, the noise rating of roof will be about 21 dB better than an open roof and about 18 dB better than just a canvas cover.



PATIO HARBOR ELEVATION

CANOPY MATERIAL SPEC - 5/8" THK., MULTI LAYER
POLYCARBONATE PANELS, TRANSLUCENT WHITE
COLOR. ADDITIONAL LAYERS CAN BE ADDED TO
DECREASE SOUND TRANSMISSION (POYGAL or
GE THERMACLEAR)

(N) INSULATED OR LAMINATED GLASS
WINDSCREEN WALL FULL HEIGHT TO
UNDERSIDE OF STRUCTURE TO
REPLACE (E) GLASS SCREEN



PATIO CANOPY - CLOSED

Upgrade to laminated glass windscreen. The glass along the front of the patio (side facing the bay) currently is regular glass. (The existing glass along the side has already been upgraded to laminated.) The proposal is to upgrade the glass along the front of the patio to laminated glass as part of the canopy project. Typical single pane glass ¼" thick has a Sound Transmission Class (STC) rating of 26. Laminated glass of the same thickness has a STC rating of 32. Therefore, upgrading to the laminated glass will reduce the amount of noise coming through the glass by about 6 dB. This is a significant improvement especially when it is combined with the following measure.

Closure of gap between canopy and glass windscreen. Currently there is a gap between the top of the windscreen along the front and the existing canopy. With the new design the windscreen is full height coming up to the bottom of the canopy. Closing gaps significantly improves the amount of noise reduction provided by a structure. As an example, it has been well documented that with a window partially open, the noise reduction of that window provides an outdoor to indoor noise reduction of 12 dB. Closing the window results in the window providing a noise reduction of 20 to 25 dB. A minimum of 8 dB of noise reduction improvement would be expected by closing the gap. This combined with the 6 dB improvement due to the upgraded glass means that the glass barrier could have a total improvement in noise of 14 dB or more.

Our measurements indicated that the noise from Woody's is inaudible at the mixed-use residential area to the north (e.g., Sites 3 and 4 on Exhibit 1). Based on the loudest of the other events measured in this area, the noise levels from Woody's at the mixed use area with a canvas canopy in place could be no louder than the 40 to 45 dBA range (Leq). No improvement in noise levels would be experienced with the proposed canopy when it is in the open position. However, with the canopy closed the noise levels patio area could easily be reduced down to the 26 to 31 dBA range (Leq). These noise levels are well below the Noise Ordinance criteria of 50 dBA (Leq), and would not be audible when the canopy is closed.

A residential area has been approved for the lot just south of Woody's. The future residential area is about 60 feet from the center of the patio area to the closest portion of the residences. Noise measurements were made at the end of the docks (i.e., Sites 1 and 2 on Exhibit 1). The nearest site is about 80 feet from the center of the patio area. The residences, since they are closer, would be about 2.5 dB louder than the measurement sites when adjusted for distance only. It is difficult to estimate what the noise level from Woody's was at Sites 1 and 2 since it was not audible at these sites. Based on the fact that Woody's noise did not add to the total noise environment, the noise from Woody's at Sites 1 and 2 had to have been less than 50 dBA (Leq). With the improved canopy/windscreen, the noise levels at the future residential areas would be no greater than 38.5 dBA (Leq), which is well below the Noise Ordinance limit of 50 dBA (Leq).

In summary, the proposed canopy/windscreen upgrade will reduce noise from the patio area significantly. The noise levels from the patio area will remain well below the Noise Ordinance criteria at both the existing mixed-use residences to the north as well as the future residences to the south.



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24 July 2013

Brenda Wisneski, AICP
Deputy Community Development Director
City of Newport Beach, Planning Division
100 Civic Center Drive
Newport Beach, CA 92660

SUBJECT: Acoustical Peer Review
Woody's Wharf – Newport Beach
RSA Project No. 1360613

Dear Brenda:

In accordance with your request, we have reviewed the noise measurement survey prepared by Mestre Greve Associates (MGA) for Woody's Wharf restaurant and bar located at 2318 Newport Blvd. in Newport Beach California. We have included a substantially complete copy of the MGA report edited only by deletion of pages insignificant to our review, and to include footnotes of our comments.

This report is based on our review of the MGA noise measurement survey as well as acoustical measurement data and observations from our 19 July site visit to Woody's Wharf. Acoustical measurements were initiated Friday night at 11:00 pm and ultimately concluded at 12:30 am. As the primary directive was to determine the noise impact and acoustical environment at the three-story mixed use residential building north of Woody's Wharf at the northeast corner of Newport Blvd. and 26th Street, several acoustical measurements were conducted at this property.

To the east of Woody's Wharf is the bay and boat repair yard beyond, to the south is parking and commercial occupancies, and to the west is Newport Blvd. Noise levels in these non-critical areas are not pertinent to our study of the noise environment at the multi-use residential building and therefore were not measured during our site visit and measurement program.

The lot immediately adjacent to the south of Woody's Wharf was under construction and enclosed in construction fences prohibiting access to the boat docks immediately outside Woody's Wharf.

NOISE STANDARDS

As stated in the MGA report, chapter 10.26 titled “Community Noise Control”, the City of Newport Beach Noise Ordinance states the maximum allowable noise levels allowed at a residential or mixed-use residential property line from an adjacent or nearby property is limited to 50 dB(A) Leq, or 70 dB(A) Lmax during the nighttime hours of 10:00 pm to 7:00 am. *(Simplified, the Leq is the A-weighted average sound levels measured for a specific time period and the Lmax is the maximum, typically short duration A-weighted sound level recorded during that period.)*

ACOUSTICAL ENVIRONMENT

During our site visit Friday night, the environment in the general area of Woody’s Wharf and the multi-use residential building consisted of general street vehicular traffic on Newport Blvd. and small masses of pedestrian foot traffic from patrons arriving or departing the nearby American Junkie and Woody’s Wharf nightclubs. The majority of pedestrian traffic activity was observed to occur along Newport Blvd. south of the nightclubs.

Singles, couples, and up to 12 person groups were observed walking on both east and west sidewalks of Newport Blvd directly in front of the multi-use residential building. Raised voices, laughing, and shouting were not uncommon occurrences during our site visit comprising the majority higher noise levels measured. Typically pedestrian traffic flow was constantly moving and loitering was observed only a few times and never for more than a few minutes in the vicinity of the mixed-use residential building.

Several cars, as well as taxis with windows down were observed to be playing loud music and occasionally passengers yelling out of automobile windows to pedestrians was observed.

We observed a few small groups of male nightclub patrons as they wandered to the east end of 26th street to *relieve* themselves between the parked cars. This was accompanied by raised voice conversations and occasional shouting near this south elevation of the mixed-use residential building.

Lines of patrons waiting to enter both nightclubs were noted in the respective parking lots during the duration of our site visit, with a few patrons loitering on the sidewalk of Newport Blvd. Noise from patrons waiting in these lines was not typically audible at the nearby street sidewalk. We noted a fairly constant flow of autos and taxis entering and leaving the parking lots during the nighttime.

During our site visit, we did not observe any commercial or general aviation in the area however the MGA noise survey however did report of one helicopter overflight to occur generating fairly high Lmax levels.

In general, at the southeast corner of the residential building nearest the bay, crowd noise and music generated from the nightclub areas to the north was always audible along with noise from street traffic and pedestrians. The southwest corner of the residential building at the intersection of Newport Blvd. and 26th Street, noise from the nightclubs proper was much less



pronounced due to the considerable noise levels generated by pedestrians and vehicular traffic on Newport Blvd.

MEASURED NOISE LEVELS

Acoustical measurements were conducted by our office at the mixed-use residential property referenced as Site 3, Site 4, and Site 6 in the MGA noise survey and shown in Table 1 and Figure A below. Measurements were conducted by MGA at two different times for Sites 3 and 4 and both results are included in the table.

TABLE 1
Measured Noise Levels

Summary Comparative Measured Noise Levels												
Location	Site 3				Site 4				Site 6			
	Southeast corner of mixed-use residential property adjacent to bay.				Northeast corner of mixed-use residential property adjacent to bay.				Southwest corner of mixed-use residential property at corner of Newport Blvd. and 26 th St.			
Metric	Leq		Lmax		Leq		Lmax		Leq		Lmax	
Conducted by:	RSA	MGA	RSA	MGA	RSA	MGA	RSA	MGA	RSA	MGA	RSA	MGA
Measured Levels dB(A)	59.2	53.2-54.5	66.4	62.4-64.5	49.5	52.1-48.2	61.2	66.3-59.2	66.0	66.5	80.5	80.8

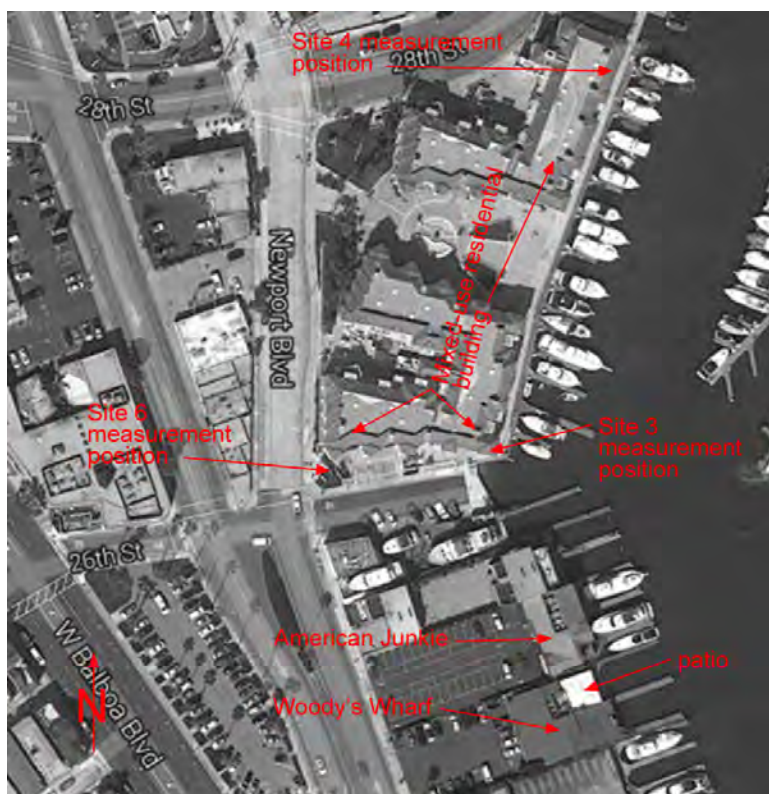


Figure A

Consistent agreement of RSA and MGA measurement results were found at Sites 4 and 6, however at Site 3 our tests indicated levels approximately 5 to 6 dB(A) higher. These higher noise levels during our measurements were due primarily to pedestrian traffic in the immediate area. We are in agreement however with MGA assessment that the noise levels from the nightclubs (in the absence of local noise occurrences) was approximately 53 dB(A) at Site 3 which exceeds the City of Newport Beach 50 dB(A) Leq maximum allowable noise limits.

Data measured during our site visit and the data reported in the MGA noise survey indicated noise levels measured at the mixed-use residential property exceed the maximum allowable 50 dB(A) Leq limits set forth in the City of Newport Beach Noise Ordinance with the exception of Site 4 which was found to be near or at the allowable limits.

PROPOSED MITIGATION MEASURES

It is our understanding that a glass wall currently exists at the perimeter of the exterior patio of Woody's Wharf. The north elevation of this wall facing towards the multi-use residences is reportedly constructed of ¼" thickness laminated glass and the east elevation facing the bay is constructed of ¼" thickness monolithic glass. An operable canvas roof covering over the patio is currently employed when required or desired for weather protection.

The American Junkie nightclub building is located immediately north of Woody's Wharf patio providing substantial beneficial acoustical shielding between Woody's Wharf patio and the south and east elevations of the mixed use residential building. The height of this building is estimated to be at least 25' above grade, effectively breaking the direct line of sight between the majority of Woody's Wharf patio and the residences. This is identified as Path A in Figure B below.

A small "slot" occurs allowing a direct line of sight between the northwest corner of Woody's Wharf patio and the residences, across the parking lot at the west elevation of the American Junkie. This is illustrated as Path B in Figure B.

To accurately calculate the dB(A) noise reduction provided by structures or materials, an octave bandwidth analysis must be conducted which includes the transmission loss for each octave band from 63Hz to 8kHz for each material of interest. The total dB(A) noise reduction is also dependent on the spectral characteristics of the octave band source noise spectrum therefore, the octave band source levels must also be utilized in the calculations. (In this case, octave band crowd noise and music levels measured during our site visit.)

It is not possible to accurately calculate the A-weighted noise reduction, the resultant A-weighted sound levels, or compare acoustical performance of a building element via simple subtraction of STC ratings or other single number level metric.



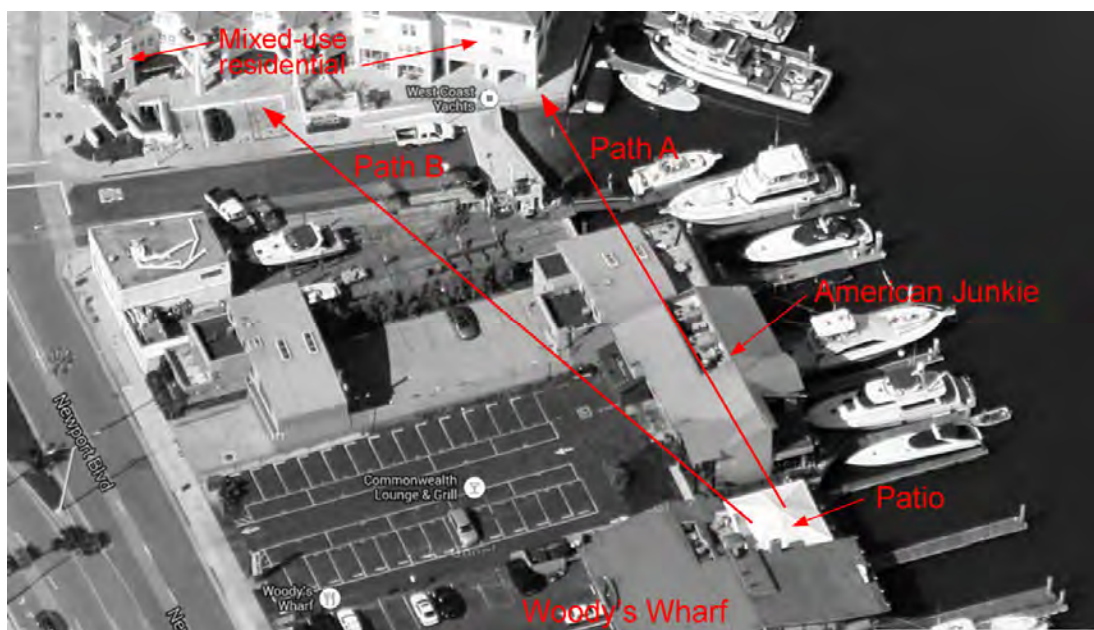


Figure B

EXISTING ACOUSTICAL CONDITIONS

Table 2 below shows the octave band noise reduction provided by the existing conditions for both Paths A and B. At Path A, the octave band noise reduction from the acoustic shielding provided by the American Junkie building only, ranges from 11 dB at 63Hz to 20 dB at 8000Hz. The overall A-weighted noise reduction provided by this structure for music and crowd noise from the patio is calculated to be 20 dB(A) for the “worst-case” higher elevation 3rd floor residences.

At Path B, the octave band acoustic shielding is provided by the existing glass barrier at the north side of the patio ranges from 5 dB at 63Hz to 13 dB at 8000Hz for a total noise reduction of crowd and music noise of 9 dB(A) at the 3rd floor residences.

TABLE 2

Existing Noise Reduction - Woody’s Wharf Patio to 3rd Floor Residences

Existing Conditions	1/1 Octave Band Noise Reduction - Decibels								Noise Reduction dB(A)
	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	
Path A Acoustic shielding provided by American Junkie building to 3 rd level residences	11	14	17	20	20	20	20	20	20 dB(A)
Path B Acoustic shielding provided by glass wall at Woody’s Wharf patio.	5	5	6	6	7	8	10	13	9 dB(A)

This suggests that residences which are shielded from the patio via the American Junkie building would be 11 dB(A) quieter {20 dB(A) – 9 dB(A)} than the unshielded areas of the residential building with direct line of sight to the patio.



ACOUSTICAL CONDITIONS W/ PROPOSED PATIO ENCLOSURE

Table 3 shows the calculated noise reduction at Path A with the implementation of the full height laminated glass walls and polycarbonate roof system. The octave band transmission loss characteristics for the ¼" laminated glass and the polycarbonate roof system were input into a proprietary computer program, and based on the total areas of each material, the transmission loss of the composite assembly was determined.

The total noise reduction provided by the composite roof and wall constructions at the patio range from 11 dB at 63Hz to 39 dB at 8000 Hz for a total of 26 dB(A) noise reduction at the 3rd level residences. Additionally, this path will also receive the beneficial acoustical shielding of the American Junkie building resulting in a total 44 dB(A) reduction of patio generated noise levels.

TABLE 3
Predicted Noise Reduction Path A - Woody's Wharf Patio to 3rd Floor Residences

Proposed Enclosed Patio	1/1 Octave Band Noise Reduction - Decibels								Noise Reduction dB(A)
	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	
Path A Acoustic shielding provided by American Junkie building	11	14	17	20	20	20	20	20	20 dB(A)
Sound transmission loss provided by ¼" laminated glass*	20	25	27	30	35	35	39	40	34 dB(A)
Predicted sound transmission loss of 0.57#/sqft polycarbonate canopy	8	12	13	18	24	29	34	38	23 dB(A)
Calculated composite sound transmission loss provided by fully enclosed patio	11	15	16	21	27	31	36	39	26 dB(A)
Total noise reduction provided by enclosed patio and shielding from American Junkie building	22	29	33	41	47	51	56	59	44 dB(A)

* ¼" laminated glass comprised of (1/8" thick glass - .030" PVB innerlayer – 1/8" thick glass

In summary, constructing the proposed patio enclosure as currently detailed will increase the noise reduction (or decrease the noise levels) from activity at Woody's Wharf patio via Path A from the current 20 dB(A) to 44 dB(A) with the enclosure resulting in noise levels at the 3rd floor residential units 24 dB(A) lower than present due only to Woody's Wharf patio generated noise only.

Table 4 shows the calculated noise reduction at Path B with the implementation of the full height laminated glass and polycarbonate roof system. The total noise reduction provided by the composite roof and wall constructions provides 26 dB(A) noise reduction at the 3rd level residences.



TABLE 4
Predicted Noise Reduction Path B - Woody's Wharf Patio to 3rd Floor Residences

Proposed Enclosed Patio	1/1 Octave Band Noise Reduction - Decibels								Noise Reduction dB(A)
	63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz	
Path B Sound transmission loss provided by ¼" laminated glass (1/8" gl-.030" PVB innerlayer- 1/8" gl)	20	25	27	30	35	35	39	40	34 dB(A)
Predicted sound transmission loss provided by 0.57#/sqft polycarbonate canopy	8	12	13	18	24	29	34	38	23 dB(A)
Calculated composite sound transmission loss provided by fully enclosed patio	11	15	16	21	27	31	36	39	26 dB(A)

At Path B, the noise reduction will increase from the current 9 dB(A) provided by the glass wall only, to 26 dB(A) noise reduction due to the patio enclosure for a total noise reduction of Woody's Wharf patio generated noise 17 dB(A) lower than presently experienced at the worst case 3rd level residences.

Again, the predicted reduction in noise levels at the residential units relates only to noise generated on Woody's Wharf patio.

CONCLUSION & DISCUSSION

Several noise level measurements were conducted by MGA at Sites 1 and 2 from an electric boat near the end of the boat docks approximately 80' from the centerline of the center of the patio. It was reported that music and noise from the nightclubs comprised the ambient background noise levels, not traffic or pedestrians on Newport Blvd.

When Woody's Wharf patio was at an apparent full capacity crowd, noise levels of approximately 61 dB(A) were measured. The same measurements were conducted again with the patio and exterior doors to the Woody's Wharf bar closed. The noise levels were essentially unchanged for both conditions suggesting that the noise generated by the operation of Woody's Wharf patio does not significantly contribute to the ambient noise levels in the area.

If noise levels of 61 dB(A) were measured with Woody's Wharf patio open and closed, the contribution of the patio noise to the overall ambient must theoretically be at least 10 decibels less than the measured 61 dB(A). Based on these data, noise from Woody's Wharf patio should not exceed 51 dB(A) when measured 80' from the center of the patio.

NOISE LEVELS AT EXISTING MIXED-USE BUILDING

The closest residential unit to the patio is located at a distance approximately 225' to the north. Extrapolating noise levels of 51 dB(A) at 80' from the patio to a distance of 225' at the residence results in a reduction of 9 dB(A) due to the increased distance. The noise levels at the residences from Woody's Wharf should therefore be 42 dB(A) {51 dB(A) – 9 dB(A)}.



With the construction of the patio enclosure completed, noise levels from the Woody's Wharf patio should be decreased from present conditions by 17 dB(A) at Path B and 24 dB(A) at Path A. This substantially satisfies the noise requirements set forth in Chapter 10.26 of The City of Newport Beach noise ordinance.

FUTURE RESIDENTIAL AREA SOUTH OF WOODY'S WHARF

Assuming 51 dB(A) noise levels from the Woody's Wharf patio when measured at an approximate 80' distance, the noise levels at the south property line 60' from the patio would be approximately 3 dB(A) greater, or 54 dB(A). We anticipate that the acoustical shielding provided by the Woody's Wharf building structure between the patio and the southerly property line would provide at least 10 dB(A) of additional attenuation at lower elevations resulting in patio-generated noise levels of no more than 44 dB(A).

Therefore at grade elevations, the predicted 44 dB(A) noise levels at the residential property immediately south of Woody's Wharf would satisfy the 50 dB(A) Leq maximum allowable noise levels of the City of Newport Beach noise ordinance.

If the proposed residential structure is multiple stories in elevation, the proposed patio canopy must be closed to satisfy the nighttime 50 dB(A) Leq maximum levels allowed by the noise ordinance at the higher elevations.

Note:

In summary, the patio and proposed enclosure should satisfy the requirements of Chapter 10.26 Community Noise Control of the City of Newport Beach ordinance for both the existing multi-use residential building to the north, and the proposed residential construction to the south.

That said, based on our site visit measurements and observations, the noise levels at the multi-use residential building are generated via pedestrian and vehicular traffic on Newport Blvd., not from Woody's Wharf patio proper. It seems more prudent that Chapter 10.28 titled "Loud and Unreasonable Noise" would be better able to control excessive noise levels from the nightclub patrons in the area of the mixed-use residential building.

This concludes our report and review of the noise measurement survey for Woody's Wharf prepared by Mestre Greve Associates. If you have any questions, please feel free to call our office.

Sincerely yours,

RS Acoustics Inc.



Robert Schmidt, Principal Consultant

Enclosures: MGA report w/ RSA edits

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1.0 EXISTING SETTING

1.1 Project Description

Woody's Wharf is a restaurant and bar located at 2318 Newport Boulevard in the City of Newport Beach (Exhibit 1). Live DJ music is played inside in the bar on Thursday, Friday, and Saturday nights. The bar room is open to an outside patio area via doors that are usually open, but remain closed after 10:00 p.m. other than when customers and employees are entering and exiting. The outside area is surrounded by a glass barrier approximately 6 feet high. The outside patio area is also covered for part of the year with a canvas canopy. The restaurant has a parking lot in the front of the building which contains a valet parking operation on the DJ music nights and at other times when peak demand warrant the valet. The restaurant also has boat docks in the front of the restaurant. This dock area is monitored by restaurant personnel and patrons are not allowed to hangout on the docks after 10 p.m. Guests with boats are permitted to dock their boats and enter the restaurant, but not to stay on their boats after 10 p.m. Outside on the south side of the restaurant is small smoking area where patrons can gather.

Another restaurant/bar is located directly north of Woody's Wharf called the Commonwealth¹. This restaurant also has music. Other sources of noise in the area are other restaurant operations, traffic on Newport Boulevard, traffic on more distant roadways, boats traveling up and down the channel in front of Woody's Wharf, people staying on boats docked in the area, aircraft, and police helicopters.

Complaints have been voiced regarding noise potentially from Woody's Wharf. The purpose of this study is to document the noise in the area, and determine the contribution of Woody's Wharf to the overall noise levels experienced in the area. The focus of the monitoring is the mixed-use development to the north (refer to Exhibit 1). The second and third floors of the mixed-use development are residences, which are the source of the noise complaints. The Commonwealth, a single-family residence, and a small shipyard are located between the residences and Woody's Wharf.

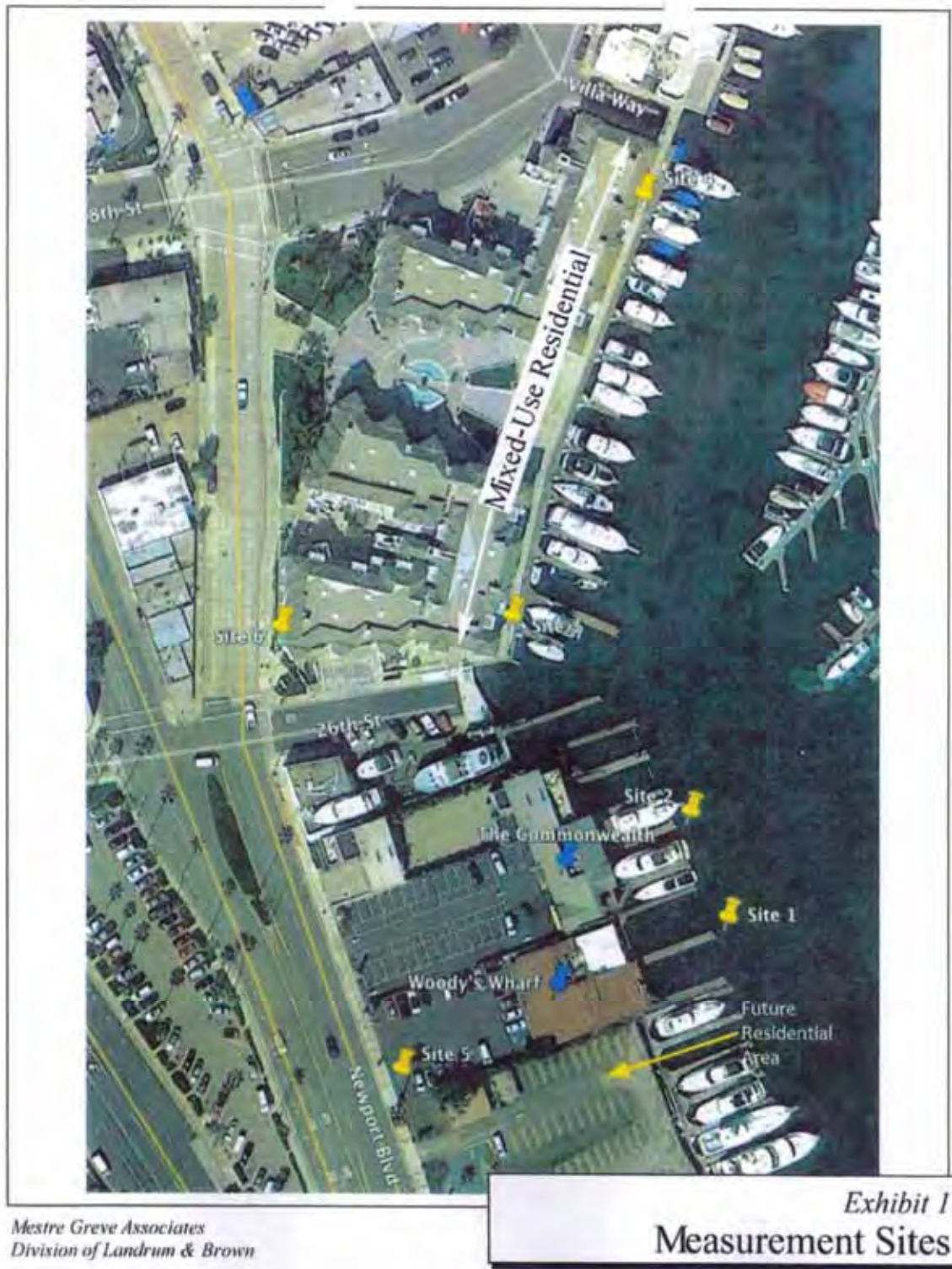
Noise measurements were taken at six sites on Friday, December 21, 2012. The sites measured are shown on Exhibit 1. Woody's Wharf was in full operation during the measurements with a capacity crowd. This report presents the methodology and results of the noise measurement survey. Noise levels are contrasted and compared to the City's Noise Ordinance.

1.2 Background Information on Noise

1.2.1 Noise Criteria Background

Sound is technically described in terms of the loudness (amplitude) of the sound and frequency (pitch) of the sound. The standard unit of measurement of the loudness of sound is the decibel (dB). Decibels are based on the logarithmic scale. The logarithmic scale compresses the wide range in sound pressure levels to a more usable range of numbers in a manner similar to the Richter scale used to measure earthquakes. In terms of human response to noise, a sound 10 dB higher than another is judged to be twice as loud; and 20 dB higher four times as loud; and so forth. Everyday sounds normally range from 30 dB (very quiet) to 100 dB (very loud).

¹ Restaurant adjacent to Woody's Wharf referred to as the Commonwealth in this report has been changed to "American Junkie".



Mestre Greve Associates
Division of Landrum & Brown

Exhibit 1
Measurement Sites

Since the human ear is not equally sensitive to sound at all frequencies, a special frequency-dependent rating scale has been devised to relate noise to human sensitivity. The A-weighted decibel scale (dBA) performs this compensation by discriminating against frequencies in a manner approximating the sensitivity of the human ear. Community noise levels are measured in terms of the "A-weighted decibel," abbreviated dBA. Exhibit 2 provides examples of various noises and their typical A-weighted noise level.

Sound levels decrease as a function of distance from the source as a result of wave divergence, atmospheric absorption and ground attenuation. As the sound wave form travels away from the source, the sound energy is dispersed over a greater area, thereby dispersing the sound power of the wave. Atmospheric absorption also influences the levels that are received by the observer. The greater the distance traveled, the greater the influence and the resultant fluctuations. The degree of absorption is a function of the frequency of the sound as well as the humidity and temperature of the air. Turbulence and gradients of wind, temperature and humidity also play a significant role in determining the degree of attenuation. Intervening topography can also have a substantial effect on the effective perceived noise levels.

Noise has been defined as unwanted sound and it is known to have several adverse effects on people. From these known effects of noise, criteria have been established to help protect the public health and safety and prevent disruption of certain human activities. This criteria is based on such known impacts of noise on people as hearing loss, speech interference, sleep interference, physiological responses and annoyance.

The description, analysis and reporting of community noise levels around communities is made difficult by the complexity of human response to noise and the myriad of noise metrics that have been developed for describing noise impacts. Each of these metrics attempts to quantify noise levels with respect to community response. Most of the metrics use the A-weighted noise level to quantify noise impacts on humans. A-weighting is a frequency weighting that accounts for human sensitivity to different frequencies.

Several rating scales have been developed for measurement of community noise. These account for: (1) the parameters of noise that have been shown to contribute to the effects of noise on man, (2) the variety of noises found in the environment, (3) the variations in noise levels that occur as a person moves through the environment, and (4) the variations associated with the time of day. They are designed to account for the known health effects of noise on people described previously. Based on these effects, the observation has been made that the potential for a noise to impact people is dependent on the total acoustical energy content of the noise. A number of noise scales have been developed to account for this observation. The three noise scales commonly used in Newport Beach are the: Equivalent Noise Level (Leq), the maximum sound level (Lmax), and the Community Noise Equivalent Level (CNEL). These scales are described in the following paragraphs.

Leq is the sound level corresponding to a steady-state sound level containing the same total energy as a time-varying signal over a given sample period. Leq is the “energy” average noise level during the time period of the sample. Leq can be measured for any time period, but is typically measured for 1 hour². This 1-hour noise level can also be referred to as the Hourly Noise Level (HNL). It is the energy sum of all the events and background noise levels that occur during that time period.

Lmax is simply the maximum sound level that occurs in any given time period. The Lmax represents an instantaneous sound level, and there is no other second in a given time period which has a louder noise level.

CNEL is the predominant rating scale now in use in California for land use compatibility assessment. The CNEL scale represents a time weighted 24-hour average noise level based on the A-weighted decibel. Time weighted refers to the fact that noise that occurs during certain sensitive time periods is penalized for occurring at these times. The evening time period (7 p.m. to 10 p.m.) penalizes noises by 5 dBA, while nighttime (10 p.m. to 7 a.m.) noises are penalized by 10 dBA. These time periods and penalties were selected to reflect people's increased sensitivity to noise during these time periods. A CNEL noise level may be reported as a “CNEL of 60 dBA,” “60 dBA CNEL,” or simply “60 CNEL.”³

1.3 Noise Criteria

A noise ordinance is designed to control unnecessary, excessive and annoying sounds from one parcel of land impacting another parcel of land. Noise ordinance requirements cannot be applied to mobile noise sources when traveling on public roadways, because Federal and state laws preempt their control. However, a noise ordinance does apply to both mobile and stationary noise sources on private property. Newport Beach Ordinance Chapter 10.26 — Community Noise Control comprises the City's Noise Ordinance.

Table 1 presents the City of Newport Noise Ordinance standards. The City of Newport Beach noise criteria are given in terms of Leq and Lmax noise levels. The noise levels specified are

² 15 min Leq, not hourly is utilized in Chapter 10.26 of the City of Newport Beach Noise Ordinance.

³ CNEL is not applicable to noise levels described or measured in this report.

those that are not to be exceeded at a property from noise generated at a nearby property (Table 1). Noise levels are to be measured with A-weighting and a slow time response usually for a 15 minute period. Greater noise levels are permitted during the day (7 a.m. to 10 p.m.) as compared to the nighttime period (10 p.m. to 7 a.m.). These limits are increased if ambient noise levels are higher. The limits are essentially raised to the ambient levels.

Table 1 City 01 Newport Beach Noise Ordinance Standards

Daytime		Nighttime	
Leg	Lmax	Leg	Lmax
<i>Zone I - Single, two, or multiple family residential</i>			
55 dBA	75 dBA	50 dBA	70 dBA
<i>Zone II- Commercial</i>			
65 dBA	85dBA	60dBA	80dBA
<i>Zone III - Residential portions of mixed-use properties</i>			
60 dBA	80dBA	50dBA	70dBA
<i>Zone IV Industrial or manufacturing</i>			
70dBA	90dBA	70dBA	90dBA

The noise levels generated by Woody's Wharf or any other noise source on private property that impacts the residential portion of the mixed should not exceed those identified for Zone III. This would be measured at the property of the residential property (i.e., the receptor). Specifically at night the noise generated by Woody's Wharf or any other source should not exceed 50 dBA (Leq) or 70 dBA (Lmax) at the residences of the mixed-use development.

1.4 Noise Measurements

Noise levels were made at six sites (Exhibit 1) during the late evening of December 21, 2012 and early morning hours of December 22, 2012. Noise measurements at all sites were performed using Bruel & Kjaer Model 2238 automated digital noise data acquisition system and sound meter mounted on a tripod. During the measurements a large windscreen covered the microphone to dampen out the effect of unwanted wind-generated noise, but has no effect on the sound measurement readings. Before and after the measurements were taken, a Bruel & Kjaer 4231 calibrator with certification traceable to the National Institute of Standards and Technology was used to calibrate the sound meter to ensure that the measured sound level readings were accurate. Table 2 shows the results of the measurements. The measurements were made at a height of 5 feet except those at Sites 3 and 4. Sites 3 and 4 were measured at 15 feet high, which is the height of the second floor residences in the mixed-use development. The measurements are presented in roughly chronological order, and are grouped by the purpose of the measurement. Measurements at different sites had different purposes. Each of the measurements is discussed following the table.

Table 2 Event Noise Measurements (dBA)

Site	Start Time	End Time	Leq	Lmax	Purpose
Site 5 ⁴	11:00 p.m.	11:15 p.m.	69.0	84.0	Parking lot
Site 6	11:00 p.m.	11:15 p.m.	66.5	80.8	Newport Boulevard
Site 1 ⁵	12:03 a.m.	12:14 a.m.	60.0	64.6	Woody dock — deck open
Site 2 ⁶	12:25 a.m.	12:35 a.m.	60.7	69.6	Commonwealth dock
Site 1 ⁷	1:07 a.m.	1:17 a.m.	63.7	71.4	Woody dock — deck closed
Site 2	1:14 a.m.	1:24 a.m.	61.4	69.3	Commonwealth dock
Site 3	12:01 a.m.	12:16 a.m.	53.2	62.4	Mixed use residential
Site 4	12:24 a.m.	12:39 a.m.	52.1	66.3	Mixed use residential
Site 3	1:03 a.m.	1:18 a.m.	54.5	64.5	Mixed use residential
Site 4	1:25 a.m.	1:40 a.m.	48.2	59.2	Mixed use residential

Site 5: Edge of Woody's Wharf Parking Lot.

This monitoring location was at the edge of Woody's Wharf parking lot near Newport Boulevard. The primary noise at this site was the traffic on Newport Boulevard. However, the peak noise levels were from people walking by on the sidewalk and yelling. One person caused a peak noise level of 80 dBA while another person reached 83 dBA. One person walking through the parking lot and yelling also reached 83 dBA. It was observed that all cars were valet parked at Woody's Wharf and that no patrons hung-out in the parking lot⁸. During the quieter traffic times some music coming from the Commonwealth could be heard. No music from Woody's Wharf could be heard, but some conversation from the line waiting to get into Woody's Wharf could occasionally be heard.⁹

Site 6: Near the northeast corner of Newport Boulevard and 26th Street.

This monitoring site was representative of the noise levels experienced by residences living along Newport Boulevard in the mixed-use development. The primary noise source was the traffic passing on Newport Boulevard. Cars passing by could reach 77 dBA. The Lmax of 80.8 was caused by a person yelling as he was walking on the sidewalk. General aviation aircraft was also heard during this period.¹⁰

Sites 1 and 2: In the channel in front of Woody's Wharf and the Commonwealth.

Site 1 was just off the south dock of Woody's Wharf and Site 2 was just off of the north dock of the Commonwealth. The noise measurements were made in an electric boat (essentially quiet). The boat did drift a little bit and its location had to be corrected occasionally. The measurements at Sites 1 and 2 were first made during the midnight hour with the outside deck¹¹ at Woody's Wharf open with what appeared to be a capacity crowd on the outside deck. Late in the midnight

⁴ Sites 5 and 6 are shown measured at the same time. Only one sound level meter is described in section 1.4. Explain

⁵ Sites 1 and 3 are shown with overlapping measurement time periods. Explain.

⁶ Sites 7 and 4 have overlapping time periods. Explain

⁷ Sites 1 and 3 have overlapping time periods. Explain

⁸ True in general, however during our visit, approximately 40-50 patrons were waiting in line to enter Woody's Wharf. They were however typically inaudible on Newport Blvd due to pedestrians on the street.

⁹ Typically Inaudible during our site visit.

¹⁰ This position has the "worst case" noise exposure level, however noise levels from pedestrian traffic typically generated a much higher noise impact than that of traffic. See RSA Inc. report for additional info.

¹¹ Assumed "deck" is the same as the "patio".

hour the operators at Woody's Wharf closed the outside deck area, and once the deck was cleared, the measurements were repeated during the one o'clock hour at Sites 1 and 2. The purpose of the second set of measurements was to see if closing the outside deck would have any effect on the noise levels. The outside deck is connected to the main bar area via a pair of doors. The outside deck is surrounded by a glass wall approximately 6 feet high that acts as a noise barrier. The music is located in the bar area and can be heard in the outside deck area.

During the first set of noise measurements with the outside deck open for patrons, noise from Woody's Wharf could not be heard, but could be heard from the Commonwealth. At Site 1 music from the Commonwealth was commonly in the 60 to 62 dBA range with a strong bass component. An inspection of the Commonwealth was not made, however, it appeared that doors from the Commonwealth bar were open and led to the bar area at the club. When the music was quieter, conversation from both Woody's Wharf and the Commonwealth could be heard at Site 1. The conversation noise from Woody's Wharf appeared to be from the area on the south side of the building, and not the outside deck area. The measurement at Site 2 (with the outside deck open) had similar results to Site 1 in that music from the Commonwealth could be heard but music from Woody's Wharf was inaudible. During the midnight hour measurement at Site 2, an apparent patron came out onto the Commonwealth dock and was yelling. His yelling was responsible for the Lmax of 69.6 dBA.

During the second set of measurements at Sites 1 and 2, the outside patio area at Woody's Wharf was not in use and the doors connecting it to the bar room were closed. The noise levels at Site 1 were slightly higher during this second set of measurements. For example, the Leq noise levels at Site I went from 60.0 dBA when the outside deck was open to 63.7 dBA when the outside deck was closed. It appeared that the music was being played louder at the Commonwealth. Music from the Commonwealth was the dominant noise source. Conversation from the Commonwealth could be clearly heard and a minor amount of conversation from Woody's Wharf when the music was not being played. The results were similar at Site 2. The Leq noise levels increased from 60.7 dBA with the deck open to 61.4 dBA with the deck closed. Again, the music from the Commonwealth was the dominant noise source, and music from Woody's Wharf was inaudible. The Lmax noise level was again due to a person at the Commonwealth yelling. The average noise levels for the second measurement at Site 2 was also slightly louder than the first due to the music being played slightly louder at the Commonwealth. But this also clearly shows that the noise from the outside deck area is insignificant and not contributing adversely to overall community noise levels. During the measurement at Site 2, patrons boarded a boat at Woody's Wharf and motored away and it was not audible.

It should be noted that after each measurement set, the noise technician went inside Woody's Wharf to confirm that music was being playing at a level consistent throughout the night and in a manner typical for live DJ music (i.e., loud).¹²

Sites 3 and 4: At the residences in the mixed-use development.

Site 3 is the most southerly of the two residential sites and is the closest to Woody's Wharf. During the first measurement the Leq was 53.2 dBA¹³, which is slightly above the noise ordinance criteria of 50 dBA. (The Lmax ordinance criterion of 70 dBA was never exceeded at Sites 3 or 4.) During the first measurement at Site 3 voices from a boat docked at the

¹² Were any interior noise levels measured during the evening? If so, what were they?

¹³ We measured 59.2 dB(A) at position 3 due to noise from nightclubs and pedestrian traffic. Lmax was 66.4 dB(A) at this location.

could clearly be heard and was generally in the range of 53 to 58 dBA but going up as high as 62 dBA. The "boom boom" from music could faintly be heard and was generally around 53 dBA. This music noise was from the Commonwealth, and operations at the Commonwealth were the reason that noise levels (Leq) were above 50 dBA at this location. During the first measurement set, the noise levels at Site 4 were similar to those at Site 3, but were due to different sources. At Site 4 distant traffic was audible around 47 dBA. A boat passed by in the channel (62 dBA), a helicopter flew overhead (66 dBA), and general aviation aircraft (48 dBA) could be heard in the distance. Voices at the boat docks of the Commonwealth could be heard briefly and were about 50 dBA. Music was occasionally audible at Site 4. The noise ordinance level of 50 dBA was exceeded at Site 4 by 2.1 dB during this measurement period. However, it was clear that the noise was above 50 dBA due to the helicopter flyover and boat pass-by and not anything associated with the restaurants/bars in the area.¹⁴

It should be noted that between Sites 3 and 4, music was being played inside one of the boats docked. The music could be clearly heard for about 70 feet in both directions along the boardwalk, but could not be heard at either Sites 3 or 4.

The measurements at Sites 3 and 4 were repeated with the outside deck at Woody's Wharf closed. The measurements at Site 3 were slightly higher during the second set of measurements. Observations during this period included music from a boat in the channel (57 dBA), voices on boat docked at Commonwealth (ranging from 61 to 64 dBA), music from boat or bars (54 dBA), low bass music most likely from the Commonwealth (54 dBA). The measurements at Site 4 were slightly lower during the second set of measurements. Observations during this period include unidentifiable music from the bar area (49 dBA) and activity from people on the boardwalk (47 to 54 dBA). In general, this was a very quiet period with the distant ocean waves and distant traffic being audible.

1.5 Summary and Conclusions for Monitoring Study

Below is a summary of pertinent observations and conclusions based on our noise measurements.

1. The parking lot is well managed at Woody's Wharf with valet parking and patrons not being allowed to loiter in the lot. (This is a common source of noise complaints from residents.)¹⁵
2. Patrons coming and going from Woody's Wharf are no louder than people walking along the public sidewalk.
3. Noise levels along Newport Boulevard and experienced at residences along Newport Boulevard can be loud, specifically with average noise levels (Leq) being in the upper 60 dBA range.¹⁶
4. Music from Woody's Wharf is well contained within the structure and the outside deck area with glass barrier. Music from Woody's Wharf was not audible.
5. Closing the outside deck at Woody's Wharf had no effect on the noise levels. This confirms that noise from the outside deck in surrounding areas is negligible. If the noise levels had gone down when the deck was closed, then that would be a strong indication that the noise from Woody's Wharf was a significant contributor to the outside noise levels. However, the noise levels actually went up slightly indicating that Woody's

¹⁴ We measured 49.5 dB(A) at site 4 which is in substantial agreement with MGA reported data.

¹⁵ We're unaware of the actual residential complaints however we found that noise from Woody's Wharf parking lot to be indistinguishable or inaudible at the residences.

¹⁶ Due primarily to pedestrian traffic and vehicular traffic.

Wharf was not a significant noise source and our observation was that the Commonwealth had increased the level of their music slightly.¹⁷

6. Music and noise from the docks of the Commonwealth are audible at the mixed-use residences. At times these sources of noise may exceed 50 dBA (Leq). At other times they may be audible, but not above 50 dBA (Leq).
7. The practice at Woody's Wharf of limiting dock use to patrons arriving and departing on boats (no loitering on boats) appears to be very beneficial to reducing noise levels in the surrounding areas and should be practiced at other bars and restaurants in the area.¹⁸
8. No noise specific to Woody's Wharf was ever identified at the mixed-use residences. Noise from Woody's Wharf is not audible at the mixed-use residences. Noise from the Commonwealth, local roadways, distant roadways, and the surf were all heard. Noise from Woody's Wharf was not heard.¹⁹
9. Noise levels at the mixed-use residences can be above 50 dBA (Leq) due to sources in the area other than bars and restaurants. Helicopter overflights, activities on the docks in front of the mixed-use area, activities on the boardwalk, and boats in the channel can all cause noise levels to go above 50 dBA (Leq).²⁰

1.6 Effects of New Patio Canopy and Windscreen

Woody's Wharf Restaurant is proposing to add a higher quality canopy than the current canvas canopy. The canvas canopy is used only during the wintertime. The new canopy would be a permanent installation and would incorporate retractable panels. A side view and top view of the canopy is shown in Exhibit 3. The canopy would be closed by 10p.m. every evening. On colder days the canopy may not be opened or would be closed earlier than 10 p.m.

There are several features of the proposed construction that make this a superior option than the current system of a canvas canopy for part of the year and no patio cover for the remaining portion of the year. Each of the key features is discussed below.

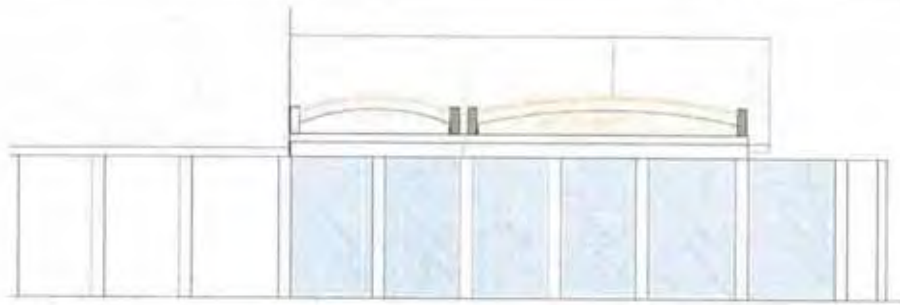
Multi-layer polycarbonate canopy panels. Currently either no cover is in place or a canvas cover is in place. With no cover in place the noise reduction of the cover is obviously zero. Based on the weight of a typical canvas cover, we have calculated that the noise reduction of canvas is only 3 dB. That is the noise is 3 dB less directly above the canvas cover than directly below. The proposed canopy will be composed of a 5/8" thick multi-layer polycarbonate panel. The panels would be composed of 3 layers of polycarbonate that would be separated by two airspaces. The surface density of the panels would be approximately 0.57 lbs. per square foot. However, similar to double pane windows, the air spaces between the polycarbonate panels provide more noise reduction than would be indicated just by the weight. According to one website (<http://www.nolvcarbonateshectsinindia.com/question.html>) the multi-layer system being proposed should provide about 21 dB of noise reduction. (Although noise reduction data for polycarbonate panels is scarce, this rating does appear to be consistent with other values reported.) Therefore, the noise rating of roof will be about 21 dB better than an open roof and about 18 dB better than just a canvas cover.

¹⁷ We concur that the exterior deck of Woody's Wharf seemed to have little impact on noise levels experienced at the residential building.

¹⁸ Noise from patrons arriving via boats has little effect on the overall noise levels experienced at the residences.

¹⁹ We agree, although surf noise was not audible during our measurements. Noise generated specifically by Woody's Wharf could not be discerned at the residences.

²⁰ At site 3, the measured 59.2 dB(A) Leq was due to both music and crowd noise from the nightclubs along with vehicular and pedestrian traffic noise on Newport Blvd. Aircraft overflights didn't occur and boat traffic was insignificant and non-contributory to the measured ambient Leq levels.



PATIO HARBOR ELEVATION

CANOPY MATERIAL SPEC - 5/8" THK., MULTI LAYER
POLYCARBONATE PANELS, TRANSLUCENT WHITE
COLOR. ADDITIONAL LAYERS CAN BE ADDED TO
DECREASE SOUND TRANSMISSION (POYGAL or
GE THERMACLEAR)

(N) INSULATED OR LAMINATED GLASS
WINDSCREEN WALL FULL HEIGHT TO
UNDERSIDE OF STRUCTURE TO
REPLACE (E) GLASS SCREEN



PATIO CANOPY - CLOSED

Upgrade to laminated glass windscreen. The glass along the front of the patio (side facing the bay) currently is regular glass. (The existing glass along the side has already been upgraded to laminated.) The proposal is to upgrade the glass along the front of the patio to laminated glass as part of the canopy project. Typical single pane glass ¼" thick has a Sound Transmission Class (STC) rating of 26²¹. Laminated glass of the same thickness has a STC rating of 32²². Therefore, upgrading to the laminated glass will reduce the amount of noise coming through the glass by about 6 dB²³. This is a significant improvement especially when it is combined with the following measure.

Closure of gap between canopy and glass windscreen. Currently there is a gap between the top of the windscreen along the front and the existing canopy. With the new design the windscreen is full height coming up to the bottom of the canopy. Closing gaps significantly improves the amount of noise reduction provided by a structure. As an example, it has been well documented that with a window partially open, the noise reduction of that window provides an outdoor to indoor noise reduction of 12 dB. Closing the window results in the window providing a noise reduction of 20 to 25 dB. A minimum of 8 dB of noise reduction improvement would be expected by closing the gap. This combined with the 6 dB improvement due to the upgraded glass means that the glass barrier could have a total improvement in noise of 14 dB or more.

Our measurements indicated²⁴ that the noise from Woody's is inaudible at the mixed-use residential area to the north (e.g., Sites 3 and 4 on Exhibit 1). Based on the loudest of the other events measured in this area, the noise levels from Woody's at the mixed use area with a canvas canopy in place could be no louder than the 40 to 45 dBA range (Leq). No improvement in noise levels would be experienced with the proposed canopy when it is in the open position²⁵. However, with the canopy closed the noise levels patio area could easily be reduced down to the 26 to 31 dBA range (Leq). These noise levels are well below the Noise Ordinance criteria of 50 dBA (Leq), and would not be audible when the canopy is closed.

A residential area has been approved for the lot just south of Woody's. The future residential area is about 60 feet from the center of the patio area to the closest portion of the residences. Noise measurements were made at the end of the docks (i.e., Sites 1 and 2 on Exhibit 1). The nearest site is about 80 feet from the center of the patio area. The residences, since they are closer, would be about 2.5 dB louder than the measurement sites when adjusted for distance only. It is difficult to estimate what the noise level from Woody's was at Sites 1 and 2 since it was not audible at these sites. Based on the fact that Woody's noise did not add to the total noise environment, the noise from Woody's at Sites 1 and 2 had to have been less than 50 dBA (Leq). With the improved canopy/windscreen, the noise levels at the future residential areas would be no greater than 38.5 dBA (Leq), which is well below the Noise Ordinance limit of 50 dBA (Leq).

In summary, the proposed canopy/windscreen upgrade will reduce noise from the patio area significantly. The noise levels from the patio area will remain well below the Noise Ordinance criteria at both the existing mixed-use residences to the north as well as the future residences to the south.

²¹ Monsanto/Riverbank Labs test data shows ¼" monolithic glass achieves acoustical rating of STC-31.

²² Monsanto/Riverbank laboratory test data shows ¼" laminated glass achieves acoustical rating of STC-35.

²³ Difference of 4 STC rating points per Monsanto/Riverbank test data.

²⁴ Due to other high-level noise sources in the area.

²⁵ Noise reduction would be increased by closing the canopy from 9 dB(A) to 26 dB(A) at Path B. See RSA report. No increase in noise reduction should occur at Path A with the canopy closed.

Attachment No. PC 7

Site Photos





WOODY'S RULES
NO OUTSIDE ALCOHOL
NO SMOKING
NO DRUGS
NO LOITERING
NO LOUING

WOODY'S RULES
NO OUTSIDE ALCOHOL
NO SMOKING
NO DRUGS
NO LOITERING
NO LOUING

GUEST USERS
DO NOT BLOCK
OTHER USERS

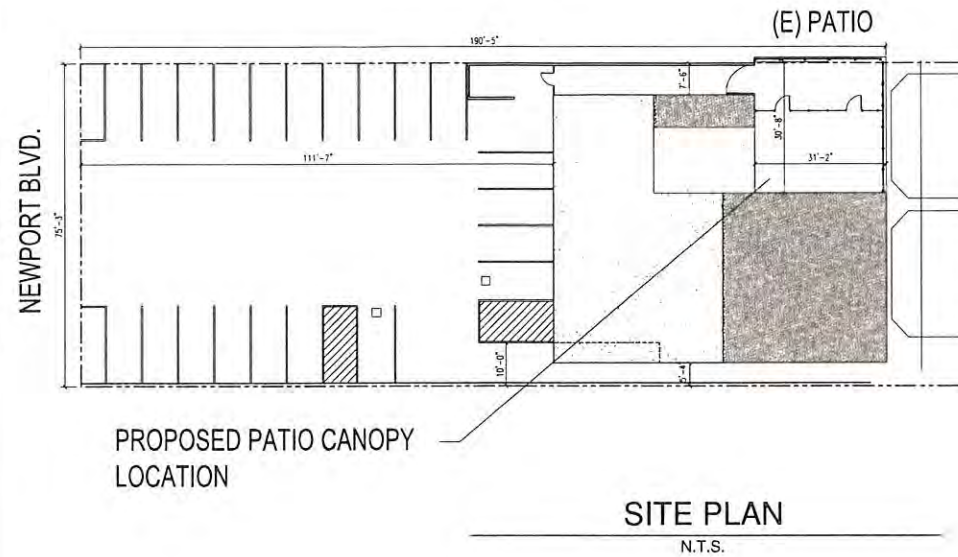
WOODY'S RULES
NO OUTSIDE ALCOHOL
NO SMOKING
NO DRUGS
NO LOITERING
NO LOUING





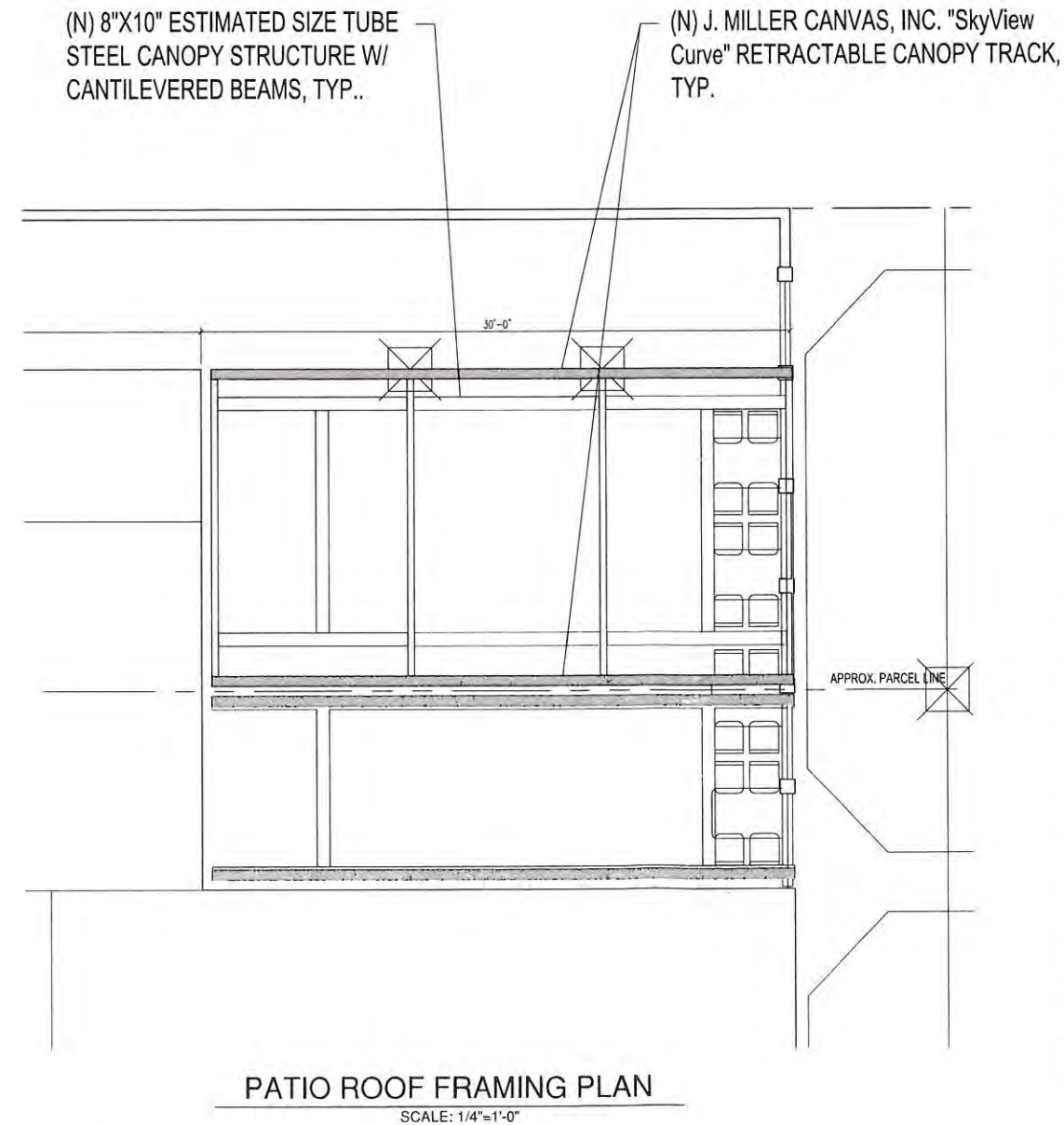
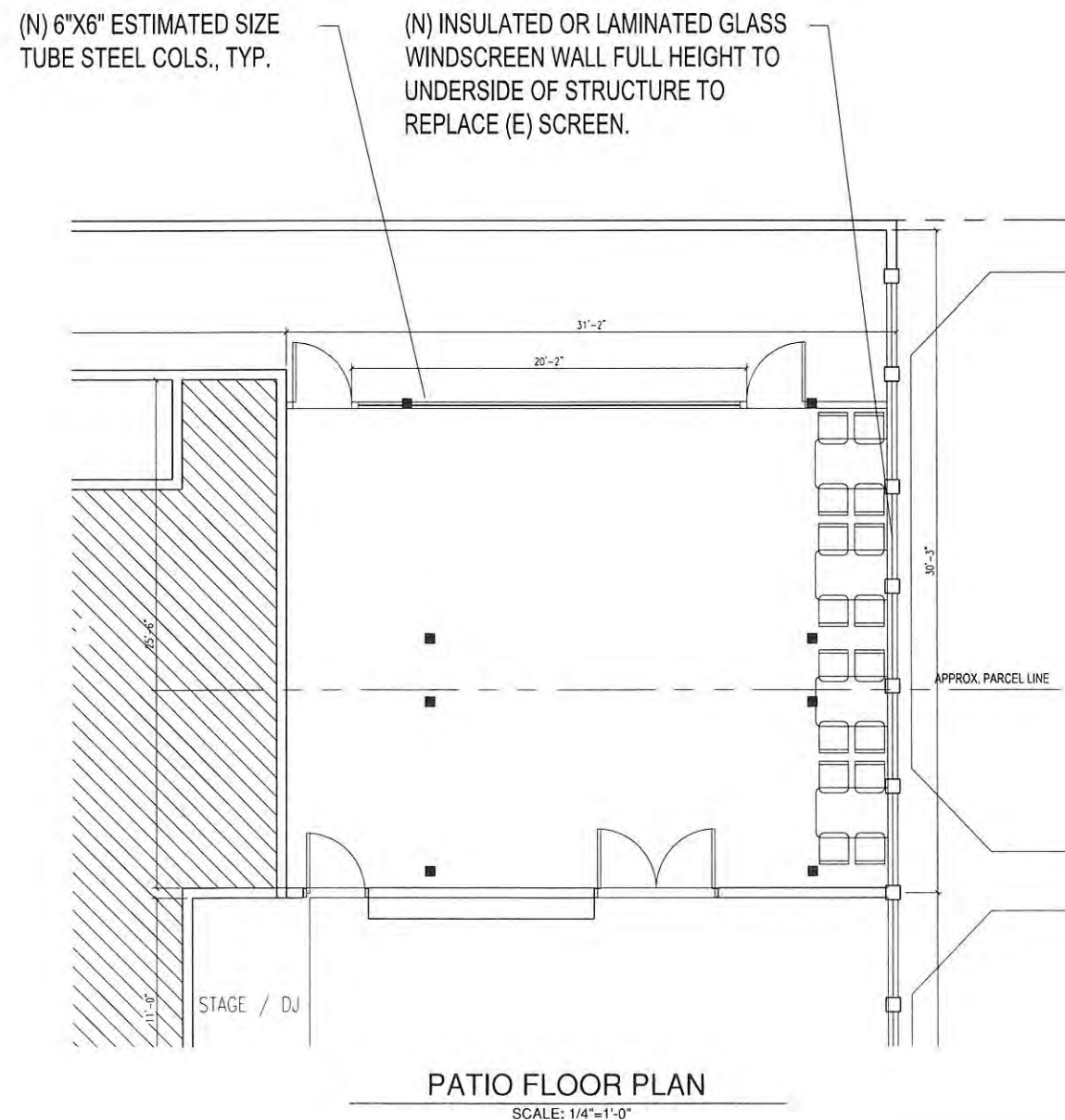
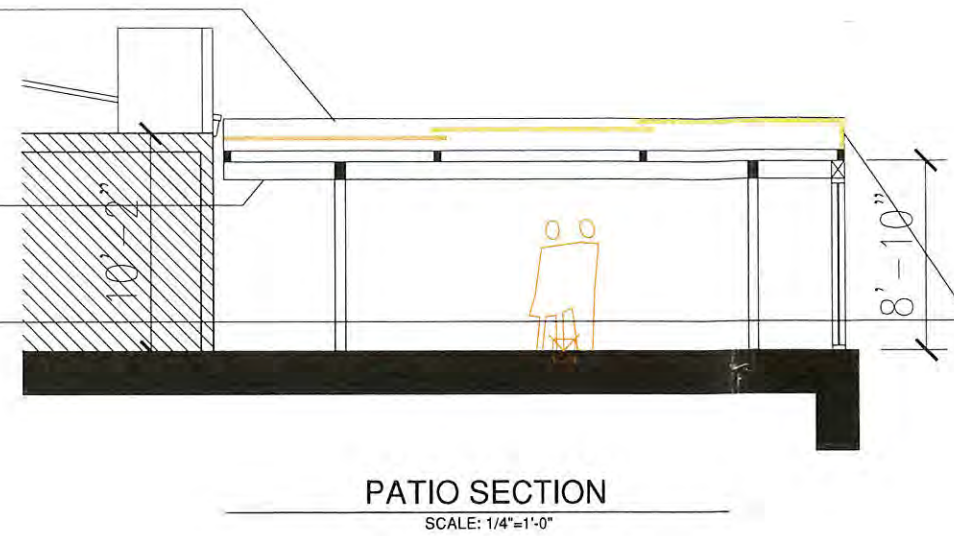
Attachment No. PC 8

Project Plans – site plan, floor plan and
patio cover



(N) J. MILLER CANVAS, INC. "SkyView Curve" RETRACTABLE CANOPY

(N) 8"X10" ESTIMATED SIZE TUBE STEEL CANOPY STRUCTURE W/ CANTILEVERED BEAMS, TYP..
(N) CANOPY END CAP PANEL TO ENCLOSE PATIO SPACE



r h a
robinson hill architecture, inc.
A California Corporation
3195-B Airport Loop Dr.
Costa Mesa, CA 92626
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Michael David Robinson: C-20731
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Project Name / Type

PATIO CANOPY STUDY
WOODY'S WHARF RESTAURANT
2318 NEWPORT BLVD.
NEWPORT BEACH, CA 92663

Client

Stamp

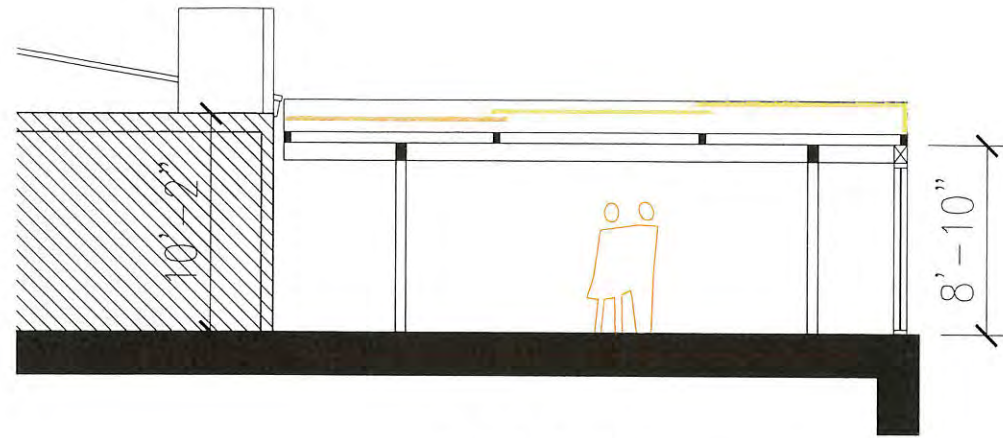
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Issue Date	04.10.13
Issue Date	05.28.13

Job Number:

Sheet Title:
PATIO CANOPY STUDY

Sheet No.:

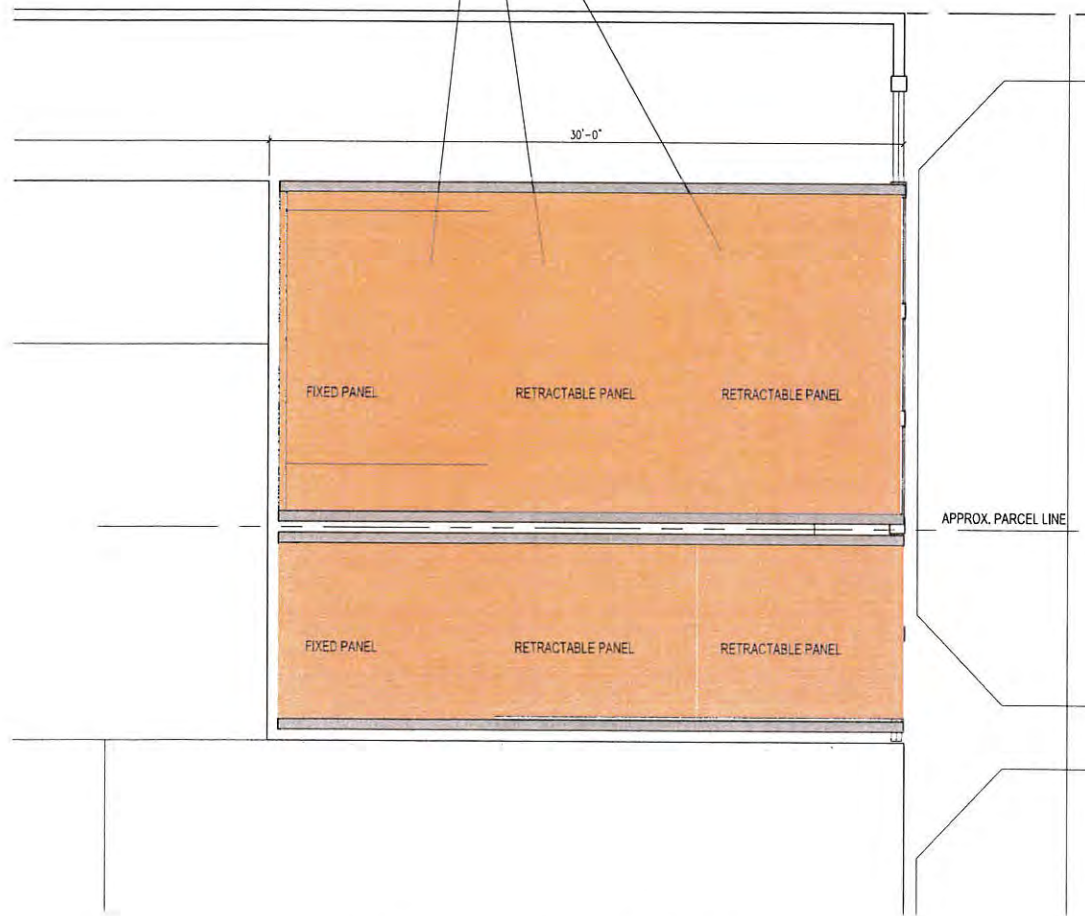
A1



PATIO SECTION

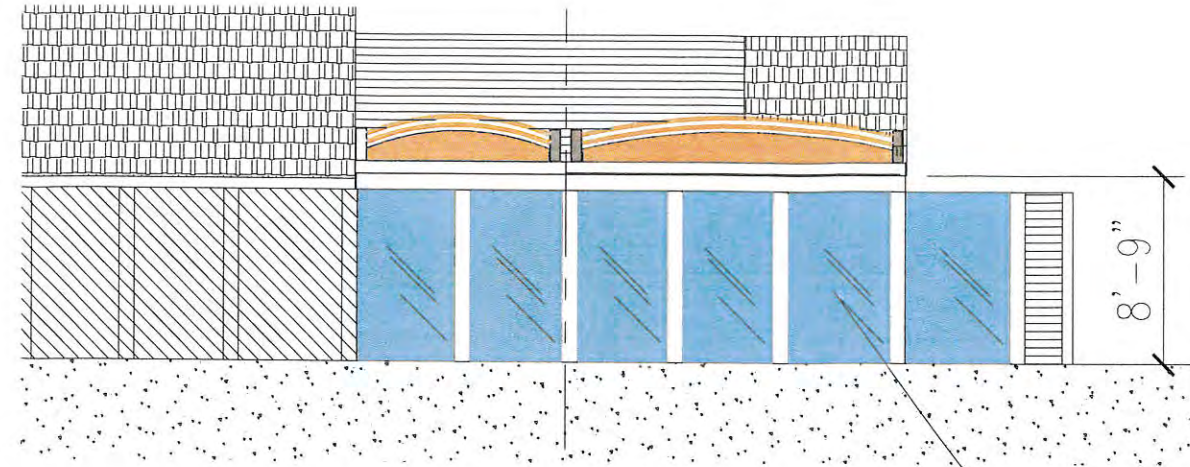
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(N) J. MILLER CANVAS, INC. "SkyView Curve" RETRACTABLE CANOPY, TYP.



PATIO CANOPY - CLOSED

SCALE: 1/4"=1'-0"

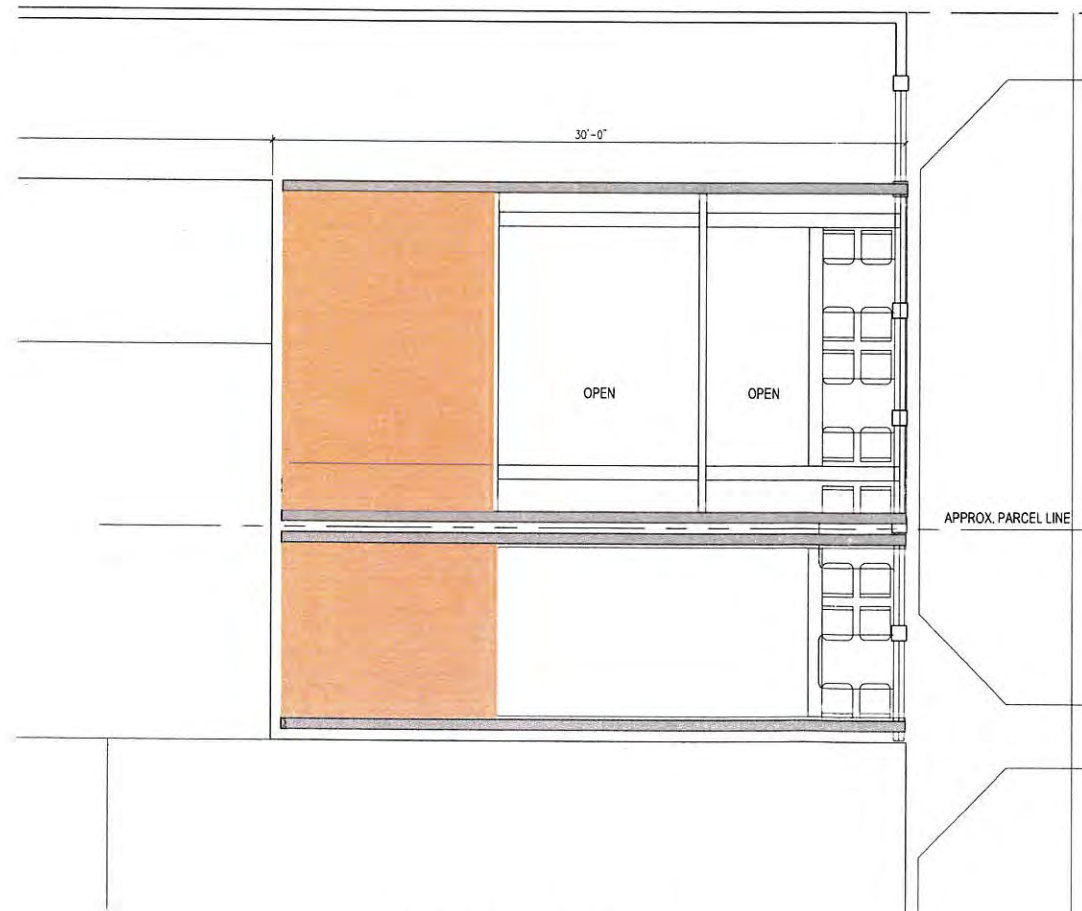


PATIO HARBOR ELEVATION

SCALE: 1/4"=1'-0"

CANOPY MATERIAL SPEC - 5/8" THK., MULTI LAYER POLYCARBONATE PANELS, TRANSLUCENT WHITE COLOR. ADDITIONAL LAYERS CAN BE ADDED TO DECREASE SOUND TRANSMISSION (POYGAL or GE THERMACLEAR)

(N) INSULATED OR LAMINATED GLASS WINDSCREEN WALL FULL HEIGHT TO UNDERSIDE OF STRUCTURE TO REPLACE (E) GLASS SCREEN



PATIO CANOPY OPEN

SCALE: 1/4"=1'-0"

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Project Name / Type

PATIO CANOPY STUDY
WOODY'S WHARF
RESTAURANT
2318 NEWPORT BLVD.
NEWPORT BEACH, CA 92663

Client

Stamp

Submittal Dates
Issue Date 04.10.13
Issue Date 05.28.13

Job Number:

Sheet Title:
PATIO CANOPY STUDY

Sheet No.:

A2

PA2011-055 for UP2011-010 VA2013-006
2318 Newport Boulevard
Martin Potts, MPA, Inc., Woody's Wharf



Spago, Beverly Hills
J Miller Canvas, Inc. "SkyView Curve" System



Spago, Beverly Hills
J Miller Canvas, Inc. "SkyView Curve" System



Sandy's, Huntington Beach
J Miller Canvas, Inc. "SkyView" System



Sandy's, Huntington Beach
J Miller Canvas, Inc. "SkyView" System

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Project Name / Type

PATIO CANOPY STUDY
WOODY'S WHARF RESTAURANT
2318 NEWPORT BLVD.
NEWPORT BEACH, CA 92663

Client

Stamp

Submittal Dates	
Issue Date	04.10.13
Issue Date	05.28.13

Job Number:

Sheet Title:
J MILLER CANVAS
INSTALLATIONS

Sheet No.:

PA2011-055 for UP2011-010 VA2013-006
2318 Newport Boulevard
Martin Potts, MPA, Inc., Woody's Wharf

A3

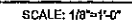
WITH
ARTHUR BAHAR

SITE PLAN

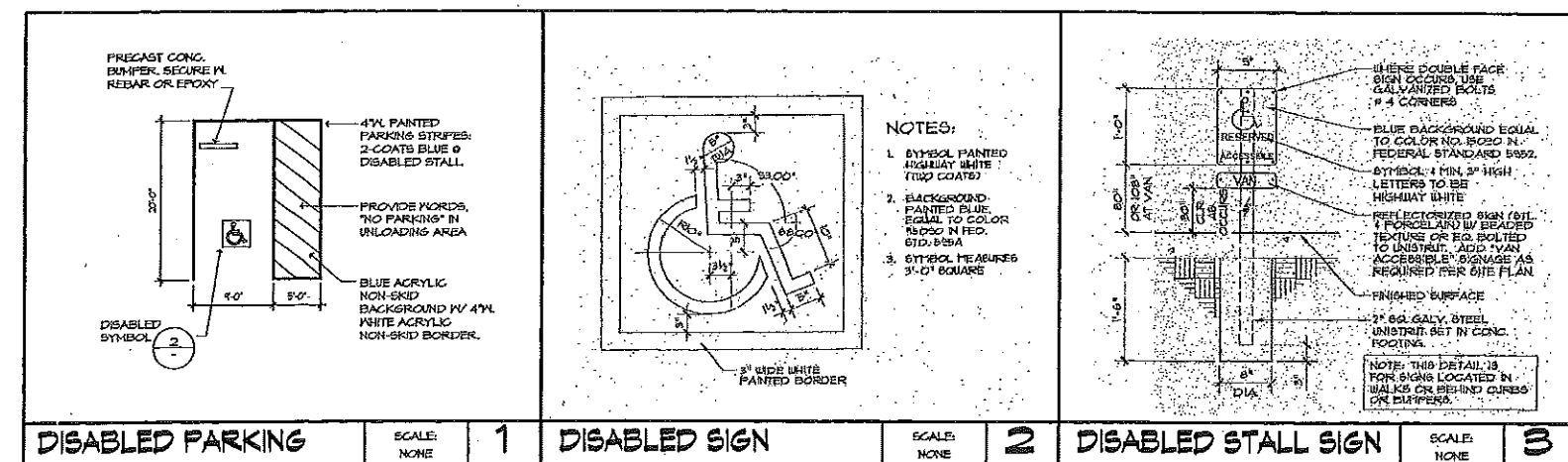
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A-1

SJK



1. SEN. CONTRACTOR TO PROVIDE A DETECTABLE MARKING PRODUCT SAMPLE TO THE BUREAU INSPECTOR FOR APPROVAL OF COLOR CONTRAST WITH FURNISH.
2. AN ADDITIONAL SIGN, OUT-POSTED, MUST BE PLACED IN A CONSPICUOUS PLACE, OUT-ENTRANCE OF THE OFF-SITE, TO INDICATE THE LOCATION OF, OR IMMEDIATELY ADJACENT TO AND VISIBLE FROM EACH STALL, OR SPACE. THE SIGN SHALL NOT BE LESS THAN 17"X32" IN SIZE WITH LETTERING NOT LESS THAN 1" HIGH. THE SIGN SHALL BE EASILY AND CONSPICUOUSLY STATES THE FOLLOWING: "UNAUTHORIZED VEHICLES PARKED IN DESIGNATED ACCESSIBLE SPACES NOT DISPLAYING Distinguishing PLACARDS OR LICENSE PLATES ISSUED FOR PERSONS WITH PHYSICALLY DISABLED ARE SUBJECT TO IMMEDIATE REMOVAL AND WILL BE RECLAIMED BY TELEPHONING THE POLICE DEPT. (344) 644-9661."
3. THE SURFACE OF EACH ACCESSIBLE PARKING SPACE OR STALL SHALL HAVE A SURFACE IDENTIFICATION DUPLICATING EITHER OF THE FOLLOWING SCHEMES:
 - a) OUTLINING OR MARKING THE STALL OR SPACE IN BLUE AND OUTLINING ON THE GROUND IN THE STALL OR SPACE IN WHITE OR SUSTAINABLE CONTRASTING COLOR, A PROFILE VIEW DEFINING A WHEELCHAIR WITH OCCUPANT, . . . OR . . .
 - b) OUTLINING A WHEELCHAIR PROFILE WITH A WHEELCHAIR WITH OCCUPANT ON BLUE BACKGROUND, THE PROFILE VIEW SHALL BE LOCATED SO THAT IT IS VISIBLE TO A TRAFFIC ENFORCEMENT OFFICER WHEN A VEHICLE IS PROPERLY PARKED IN THE SPACE AND SHALL BE 58" HIGH BY 58" WIDE.

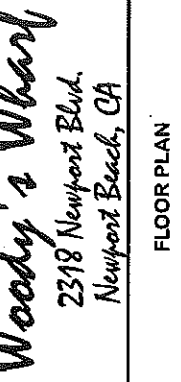


SCALE:

1



3151 Airway Ave., B2
Costa Mesa, CA 92626
PHONE: (714) 751-1130
FAX: (714) 751-9066

[illegible]

REVISION

11-9-07	PLAN CHECK
12-14-07	PLAN CHECK
3-5-08	PLAN CHECK
6-4-08	OWNER REVTS.
8-18-08	PLAN CHECK

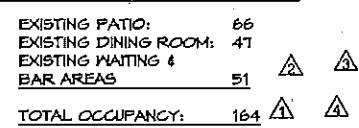
DATE

OCT. 1, 2007

SHEET

A-2

10



WHERE HARRISON FRAME DOORS ARE USED, A 10" HIGH SMOOTHED PANEL SHALL BE INSTALLED ON THE PUSH SIDE OF THE DOOR, WHICH SHALL ALLOW THE DOOR BE INSTALLED ON THE PUSH SIDE OF THE DOOR, WHICH WILL ALLOW THE DOOR TO BE OPENED BY A WHEELCHAIR OCCUPANT WITHOUT CREATING A TRAP OR HAZARDOUS CONDITION.

EXISTING PATIO:	28
EXISTING DINING ROOM	
<u>WAITING & BAR AREAS:</u>	<u>78</u>
TOTAL OCCUPANCY:	106

EXISTING PATIO:	66		
EXISTING DINING ROOM:	47		
EXISTING WAITING &		△	△
<u>BAR AREAS</u>	<u>51</u>		
<u>TOTAL OCCUPANCY:</u>	<u>164</u>	△	△

FLOOR PLAN	SCALE: 1/4"=1'-0"
-------------------	----------------------

SCALE: 1/4"=1'-0"

PARKING REQ. 61 / PROVIDED 47
PLUMBING OCC. LOAD 89/ MAX ALLOWED 100
PLUMBING FIXT. MEN 1+1 REQ., WOMEN 2 REQ. & 3/2 PROVIDED
EGRESS OCC. LOAD 265



Burns, Marlene

PA2011-055

From: Wisneski, Brenda
Sent: Tuesday, September 03, 2013 8:06 AM
To: Burns, Marlene
Subject: FW: Woody's Wharf's Application
Attachments: Ltr to Planning Commission 8-30-13.docx

From: K. Stoddard [<mailto:kstoddard1@roadrunner.com>]

Sent: Saturday, August 31, 2013 10:26 AM

To: Bradley Hillgren; Fred Ameri; Jay Myers; Kory Kramer; Ray Lawler; Larry Tucker; Brown, Tim

Cc: Kiff, Dave; Brandt, Kim; Wisneski, Brenda; Harp, Aaron; Mulvihill, Leonie

Subject: Woody's Wharf's Application

Dear Planning Commission Chairman Hillgren, Members of the Planning Commission and City Officials:

I am contacting you on behalf of the thirty-five residential owners at the 28th Street Marina Homeowners' Association at 2600 and 2700 Newport Blvd. urging you to completely deny Woody's Application. Please read the attached letter as it contains a large amount of pertinent information.

One critical point that is made on the last page of the letter is that the just-released Staff Report recommending approval of Woody's proposed retractable panel patio roof, does not specify any specific time when the panels are required to be closed. The roof panels must be closed, and remained closed, no later than 10PM nightly. Please add this to the Conditions of Approval.

Please read the entire letter.

Thank you in advance for your time and for giving consideration to the residents' side of this issue.

Sincerely,

Kent Stoddard
28th Street Marina HOA
2600 & 2700 Newport Blvd.



August 30, 2013

Planning Commission Chairman Hillgren
Members of the Planning Commission
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Planning Commission Chairman Hillgren and Members of the Planning Commission:

I am writing on behalf of our thirty-five unit 28th Street Marina Homeowners' Association at 2600 and 2700 Newport Blvd. We are located north of Woody's Wharf on the Rhine Channel. I have been a resident at 2700 Newport Blvd. for over twenty years. I am also a retired Sergeant from the Newport Beach Police Department where I worked for over thirty years.

We are very opposed to Woody's application which would legalize its late night/nightclub operation, change its outdoor patio closing time to 2 AM, allow dancing and increase its maximum allowed occupancy level. Approval of this application will result in more crime, more noise and a further deterioration of our already impacted mixed use area.

Please read this entire letter as it contains a large amount of pertinent information.

At 10PM on Thursday, Friday and Saturday nights Woody's becomes a nightclub and its outdoor "dining" patio becomes an extension of its bar. Patrons stand in line and pay a cover charge to enter, they dance to live DJ music with strobe lights and they drink and yell on the bay front patio until 2AM. Until recently, there was no food service after 9PM and that violated Woody's ABC license.

Woody's current operation impacts our area with increased crime, drunks, fights and noise. The Newport Beach Police Department responded to 157 calls at Woody's between January 1, 2012 and July 22, 2013. They included 32 fight and assault calls, 23 miscellaneous disturbance calls, 12 drunk calls and 5 calls relating to drunk drivers. On August 9, 2013, a female patron reportedly attacked a Woody's doorman after he seized her altered ID. Restaurants do not generate calls of this type or number. Woody's has become a blight on the neighborhood and a drain on Police Department resources.

Newport Beach accounts for only 2.78% of the County's population but 4.35% of the County's liquor licenses. Newport's total of 261 liquor licenses is 48% higher than the Orange County city average. Nearly 43% of Newport's liquor licenses are on or bordering the Balboa Peninsula. The crime rate in the area of Woody's Wharf is at least 203% higher than any other area of the City.

We have seen Woody's waiters serving trays of drinks to people on boats docked at their boat docks, to people standing on their boat docks, and, as recently as July 4, 2013, to people standing on the

exterior walkway along the south side of their building. We have also seen Woody's waiters using a small rubber boat to deliver trays of drinks to boats in the middle of the bay. Last summer, a Woody's employee said that Woody's is allowed to serve beer to patrons on boats at its docks. The above activities are all violations of Woody's Alcoholic Beverage Control License. Further, NBMC Section 20.48.090 B.1.a.iii states that alcohol cannot be sold or served "to persons in watercraft."

Since we purchased our homes, the City has allowed a number of businesses and restaurants in our mixed use area to become bars and nightclubs. Rudy's Pub was the Bouzy Rouge restaurant. The Newport Brewery was Delaney's Fish Market. Malarkey's Irish Pub was Tide Office Supply. The El Ranchito was a fish market. Woody's was a restaurant...now it is a nightclub after 10PM. American Junkie (formerly Commonwealth) is a nightclub but a number of years ago it was The Red Onion restaurant. After The Red Onion it became Kantina, then Hooters, then Ten Waterfront, then Commonwealth and now American Junkie. The Newport Beach General Plan states that mixed use areas must be, "highly livable for the residents." Since the City has allowed such an over-proliferation of bars and nightclubs the area has declined significantly and it is no longer in compliance with the General Plan...it is no longer "highly livable for the residents."

Woody's claims that the disturbing noise we hear is not from them, but is from American Junkie (formerly Commonwealth) next door, and that American Junkie's building shields us from any noise that Woody's generates. This is not true. Several of us have clear, unobstructed, direct line-of-sight views of Woody's patio from our second and third floor patios. Further, Woody's generates distinctive crowd roar noise and yelling from its bay front patio and American Junkie's noise is typically music and bass. The noise generated by each establishment is different. I can hear Woody's distinctive crowd roar and yelling from its amphitheater-like bay front patio in my third floor bedroom, almost four blocks away. It is especially disturbing late at night when the ambient noise level is low.

Woody's conducted a "noise measurement survey" on December 21, 2012. It was conducted during the winter, when temperatures at night were in the low 40's, when occupancy levels were not verified and while a temporary tent covered the patio. This survey cannot be representative of the noise Woody's generates during the summer when occupancy levels are at or above capacity and when the tent is not covering the patio. Further, the survey stated that the noise we hear does not originate from Woody's. This is patently not true and speaks to the overall credibility of the survey.

The Newport Beach Police Department has recommended that Woody's application be denied because the modifications requested "often lead to a nightclub type business model." A staff member at NBPD said the Department was "shocked" by the Planning Commission's decision on November 8, 2012, that extended Woody's patio closing time on Friday and Saturday nights from 11PM to Midnight. He asked rhetorically, "Why would you agree to a relaxation of the Permit Conditions when the operator has refused to abide by the current conditions?"

The timing of Woody's application, prior to the completion of the new mixed-use Newport Bay Marina complex with 27 residential units, next door at Woody's south property line, is certainly not an accident. Woody's knows that it must get its application approved before that development is completed.

The City has unfortunately used the terms "patio", "outdoor patio", "deck", and "outdoor deck" interchangeably when referring to Woody's property. Woody's has four outdoor areas: the bay front patio, the narrow walkway along the south side of the building, the boat docks and the parking lot. Woody's Outdoor Dining Permit Condition 2 states, "...the outdoor dining shall be limited to a maximum of 709 sq. ft...." and in Condition 3, "That the use of the outdoor patio shall cease at 11

PM.” The only outdoor area with 709 sq. ft., other than the parking lot and the boat docks, is the patio. Woody’s tries to confuse the issue by referring to a 2008 email from a police detective that incorrectly stated, “...their Use Permit allows them to operate the outdoor patio until close. It is the outdoor “deck” that may not be utilized after 11:00 pm.” There is no “outdoor patio” and “outdoor deck”. They are one and the same and use must cease at 11PM.

Woody’s claims that even though its Live Entertainment Permit clearly states in Condition 3, “Dancing is prohibited” that this means that having a professional performer or dancer is prohibited but it does not mean to prohibit “patron dancing.” Woody’s is trying to distort the direct, unambiguous meaning of Condition 3. “Dancing is prohibited” means...dancing is prohibited. Further, Woody’s claims that it is not required to obtain a Café Dance Permit because it charges a cover charge at the door. Why then did Woody’s apply for a Café Dance Permit in late 2012? The City denied the request.

Woody’s permit conditions are still valid and the violations of those conditions continue to occur, but enforcement stopped over a year ago when Woody’s asked for a hearing concerning its citations, then Woody’s asked for that hearing to be rescheduled, then it submitted the application to the City to “change the operational characteristics of an existing restaurant” and a Planning Commission hearing was scheduled, then Woody’s asked for that hearing to be rescheduled, then it appealed the Planning Commission’s decision to the City Council, then it asked for it to be rescheduled, and then it convinced the City to send the matter back to the Planning Commission. Woody’s has requested, and has received, delays at every stage of the process. This issue and the violations with no enforcement drag on and on... to Woody’s benefit. All the while, Woody’s continues to operate as it wishes in violation of its permit conditions and our neighborhood continues to suffer. Please enforce the current, valid permit conditions during this lengthy process.

Woody’s argument for sending its application back to the Planning Commission was that it has conducted a noise survey and has developed a roof design for its patio and these items were not part of the original application. The noise survey and the roof design do nothing to address the real issue of Woody’s illegal late night operation and therefore this application should not have been sent back to the Planning Commission. The noise survey has no merit for the reasons stated and installing a roof over the patio only addresses one part of the problem. The real issue is that Woody’s is illegally operating as a nightclub (patio use until 2 AM, noise and overcrowding, live entertainment and dancing, charging a cover charge at the door, and patrons waiting in line to enter) and that operation is negatively impacting the area.

Woody’s main position is that it is not asking for anything more than what it is already doing. What Woody’s is doing, how it is currently operating, violates several city permit conditions and ordinances. Woody’s somehow believes that it should be rewarded for its long term pattern and practice of willfully violating these conditions and ordinances by the City now legalizing its operation.

On April 24, 2013, three members from our homeowners’ association met with Woody’s operators Greg Pappas, Chris Pappas and Mark Serventi, Woody’s consultant Marty Potts and Woody’s acoustical engineer Fred Greve. Greg Pappas freely admitted that Woody’s is a “nightclub” with a DJ and dancing on Thursday, Friday and Saturday nights and that they use their patio nightly until their 2AM closing. Greg Pappas stated that he did not agree with our “interpretation” of Outdoor Dining Permit Condition 3 and Live Entertainment Permit Condition 2 that state use of the outdoor patio/deck must cease at 11PM. It is a clear, unambiguous prohibition...it is not an “interpretation.” Woody’s management only wanted to discuss their sound measurement survey and their patio roof design at this meeting and not the real issue of their illegal late night operation. Greg Pappas said that Woody’s

has no intention of changing the way it currently operates. Woody's apparently wanted to meet with us so it would look like they were trying to resolve our issues...but without actually trying to do so.

We appeal to the Planning Commission to completely deny Woody's application and to reverse its decision of November 8, 2012, that changed the Friday and Saturday night patio closing time from 11PM to Midnight. The Planning Commission has the responsibility, the power, and the obligation to stop the downward slide of our area caused by the over-proliferation of bars and nightclubs. If a retractable patio roof is approved, we request the following be included in the Conditions of Approval. (Note: the Staff Report dated September 5, 2013 does not require that the retractable roof panels be closed at any specific time. This is of critical importance. Woody's operator Greg Pappas previously stated they would close the roof at 10PM nightly "...or at whatever time you want." This must be included in the Conditions of Approval.)

- All roof panels and roof openings must be closed, and remain closed, at 10PM nightly.
- All exterior patio doors and openings must be closed, and remain closed, at 10PM nightly.
- The existing patio perimeter walls must be replaced with new sound walls designed by an acoustical engineer who will certify that they, in combination with the patio roof, will contain the patio noise within the patio.
- An independent sound measurement survey shall be conducted semi-annually to ensure that the patio noise is contained within the patio. The measurements shall be performed by an acoustical engineer selected by the City and paid for by Woody's. The semi-annual sound measurements shall be conducted without prior notice to Woody's and shall occur between 11:30PM and 1AM on random Friday and Saturday nights. One of the two semi-annual measurements shall occur between July 1 and September 15 of each year. Measurement locations shall be determined by the engineer. The first measurement shall occur upon completion of the roof and sound wall installations. Measurements shall be sent to the City following each survey and retained in file. Measurements showing that the patio noise is not being contained within the patio shall constitute a violation of this condition of approval.

Please support the residents and the Police Department and completely deny Woody's application. To do otherwise would be to reward Woody's for its flagrant, long term pattern of deliberate violations of City Permit Conditions, City Ordinances and its ABC License...and for its disregard for the City and for the nearby residents.

Sincerely,

Kent Stoddard
28th Street Marina Homeowners' Association
2600 & 2700 Newport Blvd.
Newport Beach, CA 92663

Burns, Marlene

PA2011-055

From: Wisneski, Brenda
Sent: Tuesday, September 03, 2013 8:07 AM
To: Burns, Marlene
Subject: FW: Woody's Wharf
Attachments: PersonWoody'sCityCouncilMay17'13.pdf

-----Original Message-----

From: Buzz Person [<mailto:buzz@buzzperson.com>]

Sent: Saturday, August 31, 2013 11:41 AM

To: Bradley Hillgren

Cc: Fred Ameri; Jay Myers; Kory Kramer; Ray Lawler; Larry Tucker; Brown, Tim; Kiff, Dave; Brandt, Kim; Wisneski, Brenda; doneil@hewittoneil.com; K. Stoddard; Johnson, Dale; NBPD Chief Web.; jreiss0@gmail.com; Drew.Wetherholt@marcusmillichap.com
Subject: Woody's Wharf

Dear Chairman Hillgren and Members of the Planning Commission,

I am a 68 year resident of Newport, a former two term planning commissioner and a 24 year resident of Cannery Village. I have just read the staff report on the above matter and find it incredulous that rather than recommending commencement of revocation proceedings against the Use Permit, Staff has chosen to recommend the legalization and expansion of this establishment.

On May 17th of this year, I copied you on a letter I sent to the City Council concerning the historical problems in our neighborhood as well as the policy of the Council established in the 1990's to maintain the status quo in this area, given the fine balance between conflicting uses which needs to be maintained in the area. I pointed out that this balance has become even more critical since the approval and construction of many new mixed use projects in this immediate area. As I said before and will reiterate at this point, as a resident in a mixed use area, my neighbors and I expect some inconvenience from commercial uses, specifically, Restaurant/Bar uses. It comes with the territory. Important in this thought is the recurring theme that the City cannot and should not permit the expansion of restaurant uses while at the same time encouraging a "mixed use environment," which the City clearly has been doing over the past twenty (20) years.

Please read carefully, in addition to my letter, the response from the Police Department to this request. Clearly, this operator has shown himself as one who intends to operate in a manner to enlarge his bottom line with no regard to his neighbors, you or anyone else at the City of Newport Beach. There is no reason to believe today that he will act any differently than he has over the past twenty four (24) months since he was well aware that there were problems in the community. It is for this reason that I believe that revocation proceedings might be more appropriate than following the staff's recommendation. I disagree with the Staff on this and I am hoping that if you are unwilling to commence revocation proceedings, that you will take appropriate action which would deny any expansion whatsoever.

Thank you for your consideration.

Regards,

James C. "Buzz" Person
Cannery Village

JAMES C. PERSON, JR.

Attorney at Law
507 29th Street - Suite A
Newport Beach, California 92663

Telephone (949) 673-9201
Facsimile (949) 673-0774
E-Mail buzzlaw@buzzperson.com

May 17, 2013

The Honorable Keith D. Curry, Mayor and
Members of the City Council
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Re: Cannery Village/McFadden Area/Woody's Wharf

Dear Mayor Curry and Members of the City Council:

As the time approaches for Woody's Wharf to return to the Planning Commission with its proposal to perpetuate what has been an operation in contravention of its permits, I thought I would take a moment to transmit some thoughts to you, the Planning Commission and the Staff.

The Woody's Wharf application is really not about Woody's Wharf at all. The sound that emanates from the operation is not of great consequence to myself or other neighbors except those immediately adjacent. The real issue concerns the well established City Council Policy concerning what is commonly referred to "Reporting District 15" of the Newport Beach Police Department, which encompasses my neighborhood, Cannery Village and adjacent McFadden Square.

Although most of you and staff were either not here or not involved, in the mid-1990's there was a serious problem in our area which involved the proliferation of bars and nightclubs in the area which created a multitude of problems for the residents and the Police Department. These problems included a lot of late night rowdiness, including public urination, breaking of private property and a myriad of other problems. The area literally became a "War Zone."

Unable to get much help with complaints, some residents took to the streets with video cameras documenting exactly what was going on at the time. From the City Manager, to the Police Chief, to the City Council and Planning Commission, all who saw the video where shocked and vowed to take action. Most of them, other than the Police had no idea what happens over here after about 10:00 p.m., Tuesdays through Saturdays.

The Honorable Keith D. Curry, Mayor and
Members of the City Council
May 17, 2013
Page 2

The Police, with support of the City Manager and City Council began active enforcement in the area at a great expense. Ultimately, the activity on the streets ended after months and months of increased Police Department man hours, staff time and a hearing in which the City Council denied dancing to The Cannery Restaurant. At that time, the City Council established a policy of not allowing any intensifications of uses in the area. This has been in place for about fifteen (15) years and I urge it to remain.

You need to understand that those of us who live in the area expect some inconveniences from restaurant and bar activities. We like living where we do but we believe that there needs to be a balance between the residential/commercial uses. That balance would be severely tilted if the City Council allowed any changes in operational characteristics of not just Woody's Wharf, but of any establishment that wanted to operate basically as a night club.

You, as a Council, and the Councils before you, through amendments to the General Plan, Zoning Code, and approvals of various projects containing mixed use (such as the new project right next to Woody's) have signaled to the community that you support and encourage this type of commercial/residential mix in this area. You cannot have it both ways. You cannot support this mixed use on the one hand and allow proliferation of types of uses which are contrary to such living on the other hand.

A new permit authorizing a night club use flies in the face of everything you and previous councils have been attempting to accomplish. It simply does not make any logical sense.

At the time we appeared before and met with the Council back in the 1990's, there was a plea on our behalf to maintain the "status quo" with regard to restaurant/bar intensification in Reporting District 15. The City Council responded affirmatively, establishing a policy which did just that by limiting new applications and any intensifications of existing uses.

The Honorable Keith D. Curry, Mayor and
Members of the City Council
May 17, 2013
Page 3

I urge you to continue that policy as it is a sound concept. As I said before, most residents in this area can accept a degree of inconvenience and peacefully co-exist with uses that can be bothersome or disruptive. If you change the balance, you should understand that the tilt can end up with consequences that are unacceptable and expensive to everyone, including the City as a whole..

As I indicated at the outset, the Woody's Wharf application has little to do with Woody's Wharf. What it has to do with the community at large.

Thank you for your attention and consideration.

Very truly yours,

JAMES C. PERSON, JR.

JCP/cl

cc: Planning Commission
David Kiff, City Manager (by electronic mail)
Kimberley Brandt, Community Development Director (by electronic mail)
Jay R. Johnson, Police Chief (by electronic mail)

Burns, Marlene

From: Brad Hillgren [bhillgren@highrhodes.com]
Sent: Wednesday, September 04, 2013 12:41 PM
To: 'Sharon Smith'
Cc: Burns, Marlene
Subject: RE: Woody's

Dear Mr. and Mrs. Smith:

Thank you for your comments regarding this application and for your participation in the public hearing process. Your letter will be included in the public records for consideration by the planning commission.

Brad Hillgren

HIGH RHODES
INVESTMENT GROUP

Brad Hillgren
www.HighRhodes.com

From: Sharon Smith [<mailto:sharonltsmith@cinci.rr.com>]
Sent: Wednesday, September 04, 2013 7:24 AM
To: bhillgren@highrhodes.com
Subject: Woody's

Dear Newport Beach Planning Commissioners:

We live at the 28th Street Marina at 2700 Newport Blvd. and are very distressed with Woody's Wharf's illegal late night operation. Woody's currently has dancing without the required dance permit and it uses its patio until 2AM in violation of two other permits. Woody's should not be rewarded for its long term pattern of bad behavior by the City now legalizing it.

We are urging you to consider your own residence with Woody's establishment near you. Please deny Woody's application and require them to operate within their current permits. Please do not approve dancing or use of the patio until 2 AM. The loud laughing, yelling and crowd noise penetrate our condo regularly on weekend nights and keeps us awake beyond midnight. The patio should not be used after 11PM.

Thank you for reading our concerns.

Gene and Sharon Smith

Burns, Marlene

From: Wisneski, Brenda
Sent: Wednesday, September 04, 2013 2:34 PM
To: Burns, Marlene
Subject: FW: Planning Commission meeting: Woody's Wharf Use permit and Variance.

From: Roger Etherington [<mailto:theplasticman60@gmail.com>]

Sent: Wednesday, September 04, 2013 2:31 PM

To: Henn, Michael; Petros, Tony; Hill, Rush; Daigle, Leslie; Selich, Edward; Gardner, Nancy; Curry, Keith

Cc: Bradley Hillgren; Fred Ameri; Jay Myers; Kory Kramer; Ray Lawler; Larry Tucker; Brown, Tim; Kiff, Dave; Brandt, Kim; Wisneski, Brenda; Harp, Aaron; Mulvihill, Leonie

Subject: Planning Commission meeting: Woody's Wharf Use permit and Variance.

To: The Mayor & members of the City Council:

Copy: Members of the Planning Commission:

Regarding: *"Woody's Wharf Use permit and Variance."*

Project File No.: **PA2011-055**

In 1965, I arrived in Newport Beach with my young family, directly from the U.K. & have lived in this beautiful city ever since. During these past 48 years we have always been impressed with the management of the city, led by the multiple Mayors & Council persons who have served ... even when confronting very contentious issues, the citizens have been listened to & these confrontations have been mutually resolved.

My wife & I moved to the 28th Street Marina, from our family home in Harbor Highlands in late 1992, so we were one of the original residents of this new condominium complex. I served as President of the HOA for the first 10 years & interacted with the City during our major reconstruction project. I also oversaw the negotiations regarding noise & trash issues with the neighboring business, *El Ranchito* & *McDonalds* restaurants and *Cassidy's Bar*. These issues were all resolved amicably & those businesses have been model neighbors over the intervening years.

The situation regarding *Woody's Wharf* restaurant, unfortunately has been another story entirely. *Woody's* has long been regarded as one of the best restaurants on the peninsula & we have dined there many, many times. The early evening entertainment with musicians & karaoke singing from the small interior stage, has also been part of the peninsula scene.

However the problem has been that *Woody's* has operated progressively in violation of its operating permit & city regulation, both in regard to noise levels & its hours of operation. All seemingly in total disregard of the pertinent city ordinances, a situation that stands in stark contrast to our other neighboring businesses.

We have never fully understood how *Woody's* has managed to operate in continuing violation, seemingly with impunity. Now *Woody's Wharf* is seeking approval from the city to change its mode of operation; from what has traditionally been a ***Restaurant***, with limited internal entertainment, to essentially operation as a full-fledged ***Night Club***, utilizing its open external area, while providing dining and snacks!! ... Operating under new use permits and relevant ordinances, which I am convinced from their past behavior, would also be likely ignored.

We plead with the City Council and its Planning Commission to **reject** this new application **in totality**. We have not seem fit to contact the city directly regarding this issue, as we believed it was most appropriate for it to be handled by our BOD sub-committee representatives ... but that does not mean that we are personally uninterested by this issue, as it does directly affect our lifestyle & the reasons that we have settled here.

Sincerely, **Roger & Barbara Etherington.**

Unit 222, 2700 Newport Boulevard,

Newport Beach. 92663.

Cell: <714> 606-5469.

Burns, Marlene

From: Campbell, James
Sent: Wednesday, September 04, 2013 5:00 PM
To: Burns, Marlene
Cc: Wisneski, Brenda
Subject: FW: Application for Woody's Wharf- comment for distribution and entry into the public record

Importance: High
Sensitivity: Confidential

Please transmit to the Planning Commission.

From: Denys Oberman [<mailto:dho@obermanassociates.com>]
Sent: Wednesday, September 04, 2013 4:49 PM
To: Campbell, James; Brown, Leilani
Cc: Henn, Michael; Curry, Keith; Gardner, Nancy; Petros, Tony; Daigle, Leslie; Bobbie Fesler; nlmacfa@aol.com; Nora Lehman; bettina22@roadrunner.com; 'Willis Longyear'; Cindy Koller; 'Linda Klein'; 'Deepa Bharath'; 'Rosener, Judy'
Subject: Application for Woody's Wharf- comment for distribution and entry into the public record
Importance: High
Sensitivity: Confidential

Members of the Planning Commission and City Council---

I am writing this letter to express my objection to the proposed expanded hours and scope of the Woody's Wharf establishment to that of a Night Club in nature. While I am for conscientious economic development, I am at a loss to understand how Staff can recommend the proposed application, given that:

1. The City Police Department has expressly registered concern and objection;
2. The establishment has a long history of nuisance and public health and safety violations;
3. The public has repeatedly expressed concern and objection to continued expansion of late-night bar type businesses ,as the community already has a concentration of drinking establishments with loitering and loud, disorderly behavior----behavior which spills into the nearby residential neighborhoods .

Thank you for your consideration.

Denys H. Oberman
Resident

.....

Regards,
Denys H. Oberman, CEO



OBERMAN Strategy and Financial Advisors
2600 Michelson Drive, Suite 1700
Irvine, CA 92612
Tel (949) 476-0790
Cell (949) 230-5868
Fax (949) 752-8935

Email: dho@obermanassociates.com

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Burns, Marlene

PA2011-055

From: Wisneski, Brenda
Sent: Thursday, September 05, 2013 1:11 PM
To: Burns, Marlene
Subject: Woody's

Follow Up Flag: Follow up
Flag Status: Flagged

-----Original Message-----

From: Kiff, Dave
Sent: Thursday, September 05, 2013 12:12 PM
To: Wisneski, Brenda
Subject: FW: Please explain this

-----Original Message-----

From: Kiff, Dave
Sent: Thursday, September 05, 2013 12:12 PM
To: Brandt, Kim; Mulvihill, Leonie
Subject: FW: Please explain this

Wanted to make sure you saw this one.

-----Original Message-----

From: Linda Klein [<mailto:lklein14@me.com>]
Sent: Thursday, September 05, 2013 11:20 AM
To: Nancy Gardner; Selich, Edward; Michael Henn; Daigle, Leslie; Petros, Tony
Cc: Hill, Rush; Kiff, Dave; random emails; Curry, Keith; Brandt, Kim; Nora Lehman; Judy Rosener; Claudia Morehead; ROBERTA FESLER; eobel@sbcglobal.net; Denys Oberman; cynthia koller; Lori Morris
Subject: Please explain this

PLEASE PLACE IN THE PUBLIC RECORD

I attended the meeting of the planning committee on Tuesday Sept 3 at 3:30 at the library to speak for Lido Isle and our larger neighborhood on the compatible uses and incompatible uses for the redevelopment and General Plan for the Lido Village and City Hall Site and Peninsula neighborhoods.

When I finished my comments I was told by a Committee member or city staff person that all of these things were already ingredients in the revised General Plan. Really??

There is nothing MORE INCOMPATIBLE with the General Plan for this local area than the City Council granting of extended hours and scope for WOODY'S WHARF.

We have an over concentration of bars in the area already, and this particular business is a huge headache already for our area. We hear the noise across the bay not only at the waterfront but the interior homes are calling the police with complaints! Drunk driving and the inebriated on the streets and emergency sirens in the early morning are a regular thing for us. Woody's has an abundance of violations of all kinds. The POLICE have objected to the Council extending the scope of Woody's!

Please please do not grant extended hours, etc. to Woody's. They are well documented to be bad neighbors and this is not compatible with the future plans for this part of Newport Beach. A vote by the Council in favor of extended hours and scope would have to tie in to conflicted interests on the council rather than what is best for Newport Beach.

Thank you for your consideration,

Linda Klein

Burns, Marlene

Woody's Wharf Use Permit

PA2011-055

From: Wisneski, Brenda
Sent: Thursday, September 05, 2013 1:12 PM
To: Burns, Marlene
Subject: FW: Woody's Warf Appeal, Newport Beach/ September 6, 2013

Follow Up Flag: Follow up
Flag Status: Flagged

From: Kiff, Dave
Sent: Thursday, September 05, 2013 12:42 PM
To: Mulvihill, Leonie; Wisneski, Brenda
Subject: FW: Woody's Warf Appeal, Newport Beach/ September 6, 2013

FYI

From: Wetherholt, Drew [<mailto:Drew.Wetherholt@marcusmillichap.com>]
Sent: Wednesday, September 04, 2013 7:30 PM
To: Bradley Hillgren; Fred Ameri; Jay Myers; Kory Kramer; Ray Lawler; Larry Tucker; Brown, Tim
Cc: Kiff, Dave; Henn, Michael; Brown, Leilani; Johnson, Jay
Subject: Woody's Warf Appeal, Newport Beach/ September 6, 2013

Chairman Hillgren & Planning Commissioners:

I am strongly opposed to any operational changes that would allow for any increased bar occupancy, any increased late hours and/or any type of nightclub venue/dancing at the Woody's location.

Again, the Peninsula residents find themselves having to defend their neighborhoods against bar operators who flagrantly violate the law due to a lack of proper code enforcement and a lack of willingness by certain City leadership to limit and/or control these abusive operators/establishments. Because the City has either ignored or failed to enforce the in-place codes, the City now seems afraid of lawsuits from this operator and seems to "coddle" this operator rather than firmly enforcing the codes and/or laws. Is it appropriate to "reward" an operator when the operator refuses to abide by the current codes and is a significant problem to both the community and the police department? Why is it that the planning department continues to "support/recommend" problematic bars/establishments despite disapproval from both the police department and the community?

This area already has a significant problem with the bars and the related alcohol problems including excessive amounts of police calls for service, fights, public drunkenness, crime and property damage. There are already too many bars in this area and the bar patrons tend roam from establishment to establishment often creating a path destruction of rowdiness/screaming, puke, public urination, sex, fights, crime and property damage. Planning Commissioners, I invite you to spend a Thursday, Friday or Saturday night (12 midnight-2AM) to truly experience the problems and negative impacts that this area endures due to the over-concentration of ABC licenses/problematic bars. Take a look at the police calls for service on a Thursday, Friday or Saturday night and ask yourself why is the City allowing this to continue? Is this not creating liability for the City? Why isn't there better police and code enforcement? Why do we see "advised/complied" more often than "arrest" or "cited" for all of the alcohol problems??? Why doesn't both the City and NBPD start sending a message- "enjoy Newport but drink responsibly" or be cited and/or arrested? Arrests and citations would go a long way in making this message clear. And the City certainly does NOT need to add to the problem!

Simply put, Woody's is supposed to be a restaurant, not a nightclub. Do any of you remember all of the community and policing problems that Bacchus and the Thunderbird nightclub brought to the Lido Village? The City shut it down due to frequent complaints of noise, fights and public drunkenness. Countless hours were spent by the city attorney's office, the NBPD and the residents dealing with this problem operator. The NBPD continues having problems keeping up with the alcohol related problems on the Peninsula as the calls-for-service are ridiculously high when compared to any other part of the City! We certainly do not need to create another problematic bar or nightclub. Please support our fine police officers and do not create yet another problem on the Peninsula for both the residents and police

The Peninsula is now finally experiencing some significant redevelopment that will benefit both the City, the residents and visitors. Some of these projects include the redevelopment of the Pavilions Center, the approval of a hotel at the old City Hall site, approvals of the Marina Park & Sunset Ridge Park, the Balboa Village Revitalization/the ExplorOcean Center, and the new redevelopments of the Newport Bay Marina Complex, Lido Village and 3388 Via Lido (residential/commercial). The 4th of July is finally becoming more enjoyable and under control due to the outstanding efforts of the residents, police and certain city leaders. LUGO and the "4th is for Families Parade" are great successes. Extending the hours and creating a larger problematic bar/nightclub does nothing for our community.

Please listen to the community and the police department to deny this application. Another problematic bar expansion and/or night club is wrong and negative for the community, public safety and for the quality of life on the Peninsula! The Peninsula already has the highest incidents of DUIs and alcohol related problems. Let's continue to make the Peninsula a better place!

Thank you for your consideration!

Sincerely,

Drew Wetherholt
Newport Beach Resident



**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
100 CIVIC CENTER DRIVE
NEWPORT BEACH, CA 92660
(949) 644- 3297**

Memorandum

To: Planning Commissioners
From: Brenda Wisneski, Deputy Community Development Director
Date: September 5, 2013
Re: Item #5 Woody's Wharf - Modified Conditions of Approval

4. All doors and windows of the interior, including the patio cover, of the eating and drinking establishment shall remain closed whenever live entertainment occurs or after 10:00 p.m., except for the ingress and egress of patrons and employees. Doors shall not be propped open, or remain open longer than necessary, to allow for the ingress and egress of patrons and employees.
18. This Conditional Use Permit ~~and Variance~~ may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
28. Prior to certificate of occupancy for use of the outdoor patio beyond 11:00 p.m., an acoustical engineer retained by the City shall conduct noise measurements around the enclosure, at the property lines, and at the residential uses in the vicinity to verify compliance with the applicable noise control requirements of the Newport Beach Municipal Code.
- ~~35. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening and water quality purposes.~~
50. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9~~10~~:00 p.m.

WOODY'S WHARF
APPLICANT'S SUGGESTED MODIFIED CONDITIONS OF APPROVAL
PA2011 - 055

9. The outdoor dining area shall be limited to a maximum of 66 seats, including disabled seats/table space, consistent with the floor plans as approved by Plan Check set of plans PC1141-2011. The seating and dining in the outdoor dining patio shall be limited to dining table height (approximately 30 inches) and the use of the elevated counters and barstools is prohibited. ~~Removal of dining tables and chairs shall be prohibited.~~
51. ~~"VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including Mminimum drink order or sale of drinks is prohibited.~~
52. The quarterly gross sales of alcoholic beverages shall not exceed that which is required under the ABC license issued to Woody's Wharf and the ABC laws.~~the gross sales of food and retail sales during the same period.~~ The licensee shall maintain records that reflect separately the gross sale of food and the gross sale of alcoholic beverages of the licensed business. ~~Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPD on demand.~~

Woody's Wharf Use Permit & Variance



Planning Commission
Public Hearing
September 5, 2013



PC Action 11/8/2012



- Approve:
 - Opening hour 10 a.m.
 - Outdoor area to midnight Friday and Saturday
 - Valet parking on an as-needed basis
 - Waiver of 6 parking spaces

- Deny:
 - Patron Dancing
 - Closing of the outdoor dining area to 2 a.m.
 - Change to the outdoor dining floor plan.

Application



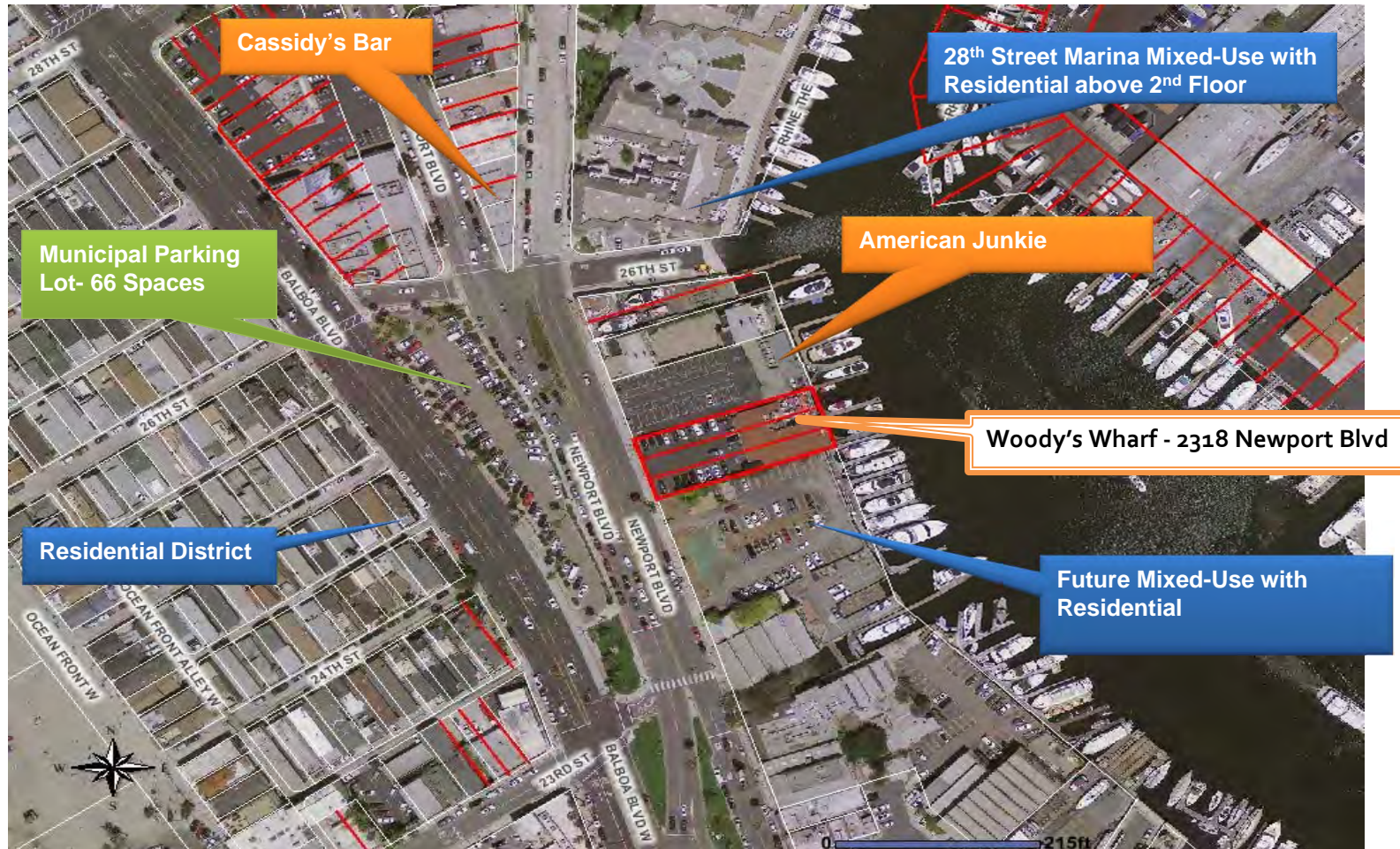
■ Amend the Use Permit :

- Patron Dancing, modify floor plan and remove chairs at 10 p.m.
- Extend the opening hour from 11 a.m. to 10 a.m.
- Extend the closing hour of the outdoor dining area from 11 p.m. to 2 a.m.
- Modify valet parking service
- Waive up to 6 parking spaces

■ Variance for patio cover to encroach into bulkhead setback



Vicinity Map



Background



- Established 1965
- Entitlement History
 - November 1983, Use Permit outdoor dining area
 - March 1988, Use Permit require barriers to reduce noise.
 - October 1995, Outdoor Dining Permit to expand outdoor dining area and close at 11:00 p.m.
 - March 2006, Live Entertainment Permit

Issues



1. **Modify the valet parking service**

- Provide as-needed and when live entertainment occurs.

2. **Waive 6 parking spaces**

- Parking not fully utilized during the daytime hours.
- Parking in the municipal parking lot across the street is free after 6 p.m



3. **Extend opening hour from 11 a.m. to 10 a.m.**

- Not a significant operational change.

4. **Patron Dancing**

- Night club atmosphere.
- Requires modified floor plan.



5. **Close of Outdoor Dining Area from 11 p.m. to 2 a.m.**

- Patio cover to mitigate noise.





07/13/2012

Community Development Department - Planning Division

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07/13/2012



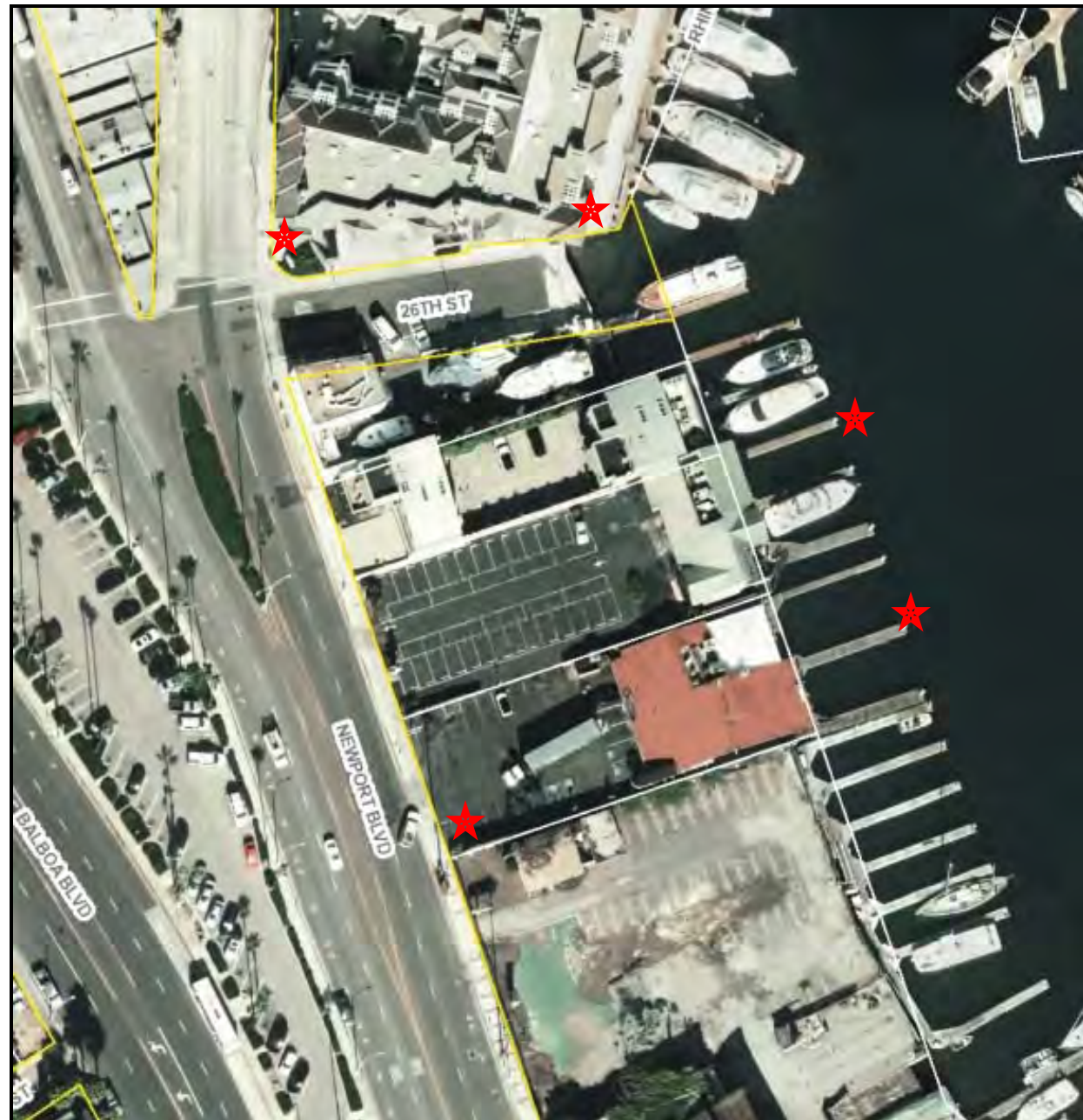


Noise Studies



- Two Noise Studies
 - Applicant's analysis (MGA) – December 2012
 - Noise Measurements
 - Affects of Patio Cover
 - City's analysis (RSA) – July 2013
 - Verify MGA conclusions
 - Additional Measurements
 - Affects of Patio Cover

Noise Measurement Locations



Noise Studies



Similar conclusions:

- Surrounding noise can be upper 60 dBA range
- Sources of noise varied
- Woody's did not contribute to total noise environment
- Cover would significantly reduce noise from patio
- Operation of patio would not create exceedance of noise standard

Variance Findings



07/13/2012



- 10-foot setback from bulkhead required
- Patio 30-foot deep and located at bulkhead
- 10-foot setback would not achieve objective
- Adjacent property also located at setback
- Cover would not contribute to life of the development

Community Development Department - Planning Division

Recommendation



Approve:

1. Opening hour 10:00 a.m.
2. Valet parking on an as-needed basis
3. Waiver of 6 parking spaces
4. Variance for patio cover to encroach into setback
5. Closing of the outdoor dining area to 2 a.m.

Deny:

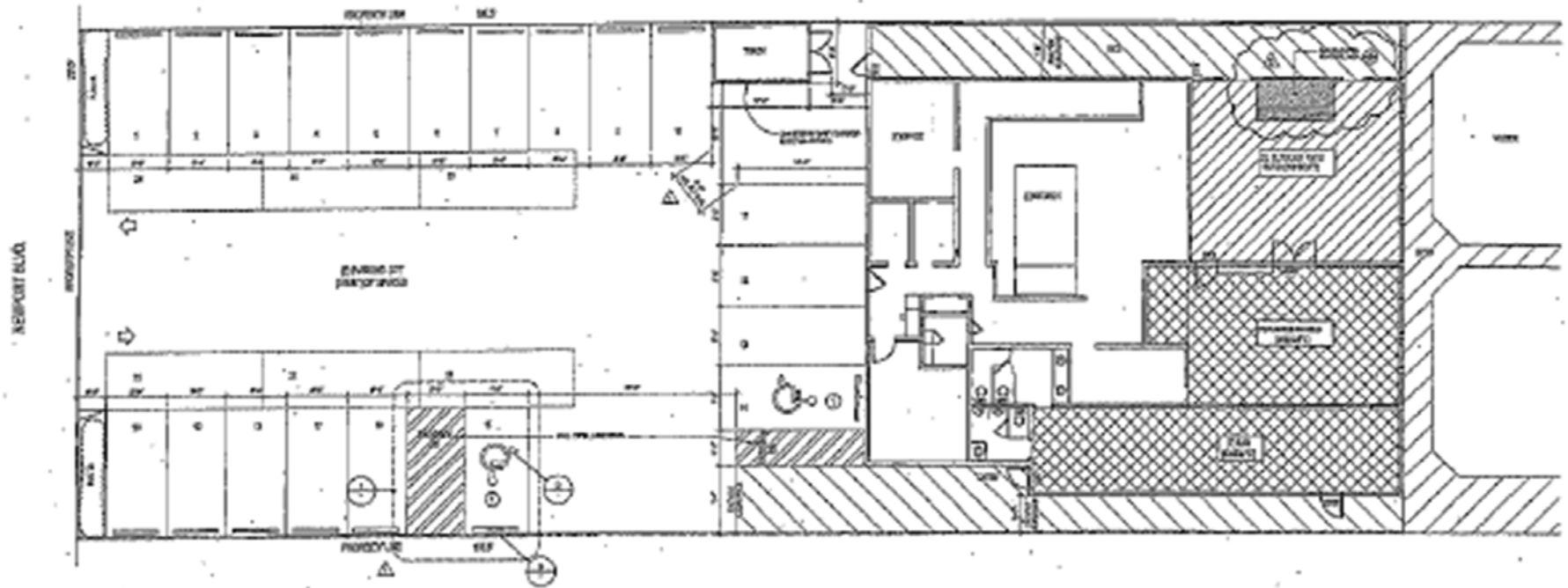
1. Patron Dancing
2. Change to the outdoor dining floor plan.



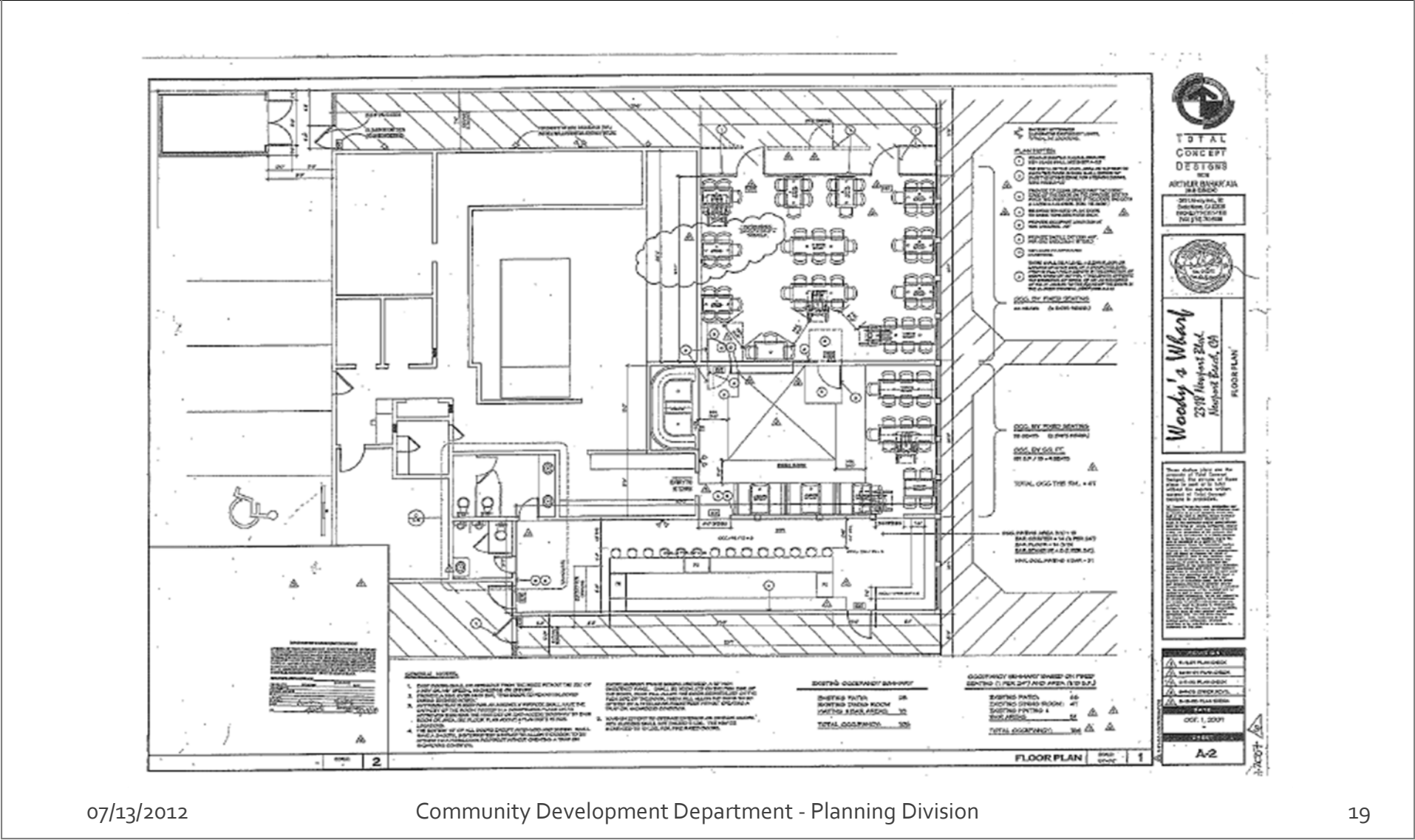
For more information contact:

Brenda Wisneski, AICP, Deputy Community Development Director
949-644-3297
bwisneski@newportbeachca.gov
www.newportbeachca.gov

Site Plan



FLOOR PLAN



LATE-HOUR FLOOR PLAN

